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## SENATE—Wednesday, July 31, 1996

The Senate met at 9 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Holy Lord God, we admit that we often try to live our lives within the narrow, limited dimensions of our own wisdom and strength. As a result, we order our lives around our own abilities and skills and miss the adventure of life You have prepared for us. We confess to You all the things we do not attempt; the courageous deeds we contemplate but are afraid we cannot do, the gracious thoughts we do not express; the forgiveness we feel, but do not communicate. Forgive us, Lord, for settling for a life which is a mere shadow of what You have prepared for us, forgetting that You are able to do in and through us what we could never do by ourselves.

Plant in us the vivid picture of what You are able to do with lives like ours, and give us the gift of new excitement about living life by Your triumphant power in the name of our Lord and Saviour. Amen.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Idaho is recognized.

### SCHEDULE

Mr. CRAIG. Mr. President, this morning the Senate will immediately turn to the consideration of S. 1936, the Nuclear Waste Policy Act. The bill will be considered under a previous unanimous-consent agreement that limits the bill to eight first-degree amendments with 1 hour of debate equally divided on each. Following disposition of that bill, the Senate will resume consideration of the transportation appropriations bill which will also be considered under an agreement limiting first-degree amendments to that bill. Following disposition of those bills, the Senate may also be asked to turn to

consideration of the VA-HUD appropriations bill. Therefore, Senators can expect a full legislative day with roll-call votes expected throughout the day and into the evening in order to complete action on the bills just mentioned or any other items cleared for action.

### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

### NUCLEAR WASTE POLICY ACT OF 1996

The PRESIDING OFFICER (Mr. INHOFE). The Chair lays before the Senate S. 1936, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1936) to amend the Nuclear Waste Policy Act of 1982.

The Senate resumed consideration of the bill.

#### AMENDMENT NO. 5055

Mr. MURKOWSKI. Mr. President, I call up amendment No. 5055 which is at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 5055.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. MURKOWSKI. Mr. President, this amendment will solve a pressing environmental problem, a major environmental problem in our Nation, a problem that is looming as a liability to the taxpayers, and this will end an era of irresponsible delay.

This major environmental issue is simple to understand. That is, do we want 80 nuclear waste dumps in 41 States serving 110 commercial reactors

and defense sites across the country—near our neighbors, our schools and populated cities? Or do we want just one in the remote, unpopulated Nevada desert where we tested and exploded nuclear weapons for decades?

Mr. President, I am going to yield some time on the amendment to the distinguished Senator from South Carolina, the Senate President pro tempore, Senator THURMOND, without losing my right to the floor.

Mr. THURMOND. I thank the able Senator from Alaska.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today in strong support of S. 1936, the Nuclear Waste Policy Act of 1996. In 1982, Congress passed the Nuclear Waste Policy Act, which directed the Department of Energy to develop a permanent repository for highly radioactive waste from nuclear powerplants and defense facilities. This act was amended in 1987 to limit DOE's repository development activities to a single site at Yucca Mountain, NV. Since 1983, electric consumers have been taxed almost \$12 billion to finance the development of a permanent storage site. Despite DOE's obligation to take title to spent nuclear fuel in 1998, a permanent repository at Yucca Mountain will not be ready to accept this waste until the year 2010, at the earliest.

Mr. President, a July 16, 1996, Washington Post editorial states that the nuclear waste storage situation is not yet a fully urgent problem. I believe that it is a fully urgent problem. Currently, nuclear waste is stored in 41 States at facilities that were never intended for long-term storage. At least 23 nuclear reactors are nearing full storage capacity for their spent fuel. According to a Washington Post article from December 31, 1995, every day, 6 more tons of high-level radioactive waste pile up at the Nation's 109 nuclear powerplants, a total of some 30,000 tons of spent fuel rods so far. If it were all shaped into midsize cars, it would fill every parking space at the Pentagon—twice over—with material

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

that will be dangerous for centuries. And there's nowhere for it to go.

On July 23, 1996, the U.S. Court of Appeals for the District of Columbia Circuit correctly ruled that DOE must begin disposing of this waste by 1998. Unless we designate an appropriate storage site soon, DOE will be unable to safely fulfill this obligation. Without a central interim site, DOE may be forced to use existing DOE facilities that are unsuitable for waste storage. Or, if DOE continues to evade its obligation to store waste by 1998, facility operators may then have to expand on-site storage at an additional cost to ratepayers. Powerplants may have to close down, adversely affecting the reliability of electric services and depleting funding for the Federal disposal program. Because DOE will fail to provide an appropriate facility for this waste on time, we must designate a temporary central storage site immediately. Anything less would be irresponsible and dangerous to the environment.

The most logical location for an interim site is Yucca Mountain. Transportation of spent nuclear fuel is a delicate undertaking, so it is sensible to locate an interim facility as near to the likely permanent facility as is possible. We have already spent 13 years and \$6 billion to find a permanent repository site and conduct development activities at Yucca Mountain. Designating a central interim storage facility and continuing to develop a permanent repository at Yucca Mountain is our most reasonable course of action.

S. 1936 provides a safe, efficient, and responsible means for reaching this objective. I would like to commend Senator CRAIG and Senator MURKOWSKI for their excellent work on this bill, and I urge my colleagues to vote in favor of final passage.

Mr. President, I yield the floor. Again, I thank the Senator from Alaska.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair and I thank my good friend and colleague for his support in addressing once and for all the issue of high-level nuclear waste in this country.

Mr. President, I think it is significant to reflect that at last we have in our extended debate with our good friends from Nevada basically broken the filibuster on this issue. Today the Senate is going to have the chance to debate the issue and reach conclusions. We are demonstrating, I think, that we do have the courage to address this difficult problem, recognizing that it is one of the major environmental issues before the U.S. Senate.

Two weeks ago Senator CRAIG, Senator JOHNSTON, and I stood on this

floor and said the Government had an obligation to take this spent fuel. Of course, some disagreed with us. Some argued that the Government had no such obligation. But a curious thing happened last week. A Federal appeals court unanimously ruled the Government does, indeed, have an obligation to take the spent fuel; as a matter of fact, a statutory obligation.

Mr. President, this is a landmark decision, because it makes it imperative for us to pass this bill today. The situation has radically changed since our last vote.

I appeal to my colleagues, if you did not vote with us last time, there is a good reason to vote with us today. That reason is very simple: The court unanimously ruled that the Government does have an obligation to take the spent fuel. Again, Mr. President, that is a statutory obligation. The courts have confirmed our contention that the Federal Government has the obligation to take spent commercial fuel.

Failure to pass this bill and build an interim repository means the Government will have to take the fuel and put it somewhere else, or simply pay the damages. The court has not specified the amount of the damages yet because, technically, the Government has not yet broken its promise. But the damages could run into the billions of dollars if the Government reneges on its obligation. If we do not build an interim repository in Nevada, the Government might have to store the fuel at other Federal facilities around the Nation.

The interesting thing about this problem, Mr. President, you simply cannot just throw spent fuel up in the air and defer the decision about where to store it. It has to come down somewhere. It has to be stored somewhere. Perhaps it will be the naval fuel storage facility in Connecticut, or maybe Rocky Flats or Fort St. Vrain in Colorado, or maybe the Pinellas plant in Florida, or maybe in Ohio, Portsmouth, Mound or Fernald, or maybe West Valley in New York, or perhaps Paducah in Kentucky, or perhaps it will be in Hanford on the Columbia River, which flows through Oregon and Washington.

Therefore, Senators, I appeal to you, those from Connecticut, Colorado, Florida, Ohio, New York, Kentucky, Oregon, those who did not vote with us for cloture on the motion to proceed, you might want to reexamine your position in light of the recent court decision, which simply states the Federal Government has to take it. The court has said the Government must take the spent fuel. As I have said, it has to go somewhere. If you are saying no to Nevada, you may be saying yes to your own State. You are certainly saying yes to someplace else.

Last night I received a letter from Secretary of Energy O'Leary that criti-

cizes Senate bill 1936 because it provides for the Department of Energy to begin accepting waste in 1999 and not 1998. I repeat, Mr. President, last night we did receive a letter from the Secretary criticizing Senate bill 1936 because it provides for the DOE to begin accepting waste in 1999, not 1998. This criticism is almost humorous in light of the fact that the current administration would not provide for the acceptance of waste at a central facility until the year 2010 at the earliest. Even under the most optimistic scenario, the Department of Energy would be in breach of its contract for 12 years.

Further, the letter is inconsistent on its face because it then proceeds to criticize Senate bill 1936 for providing unrealistic schedules. It seems the administration believes our bill would provide an interim storage facility both too late or perhaps too soon.

Senate bill 1936 provides a valid, realistic plan for the construction of a safe, centralized interim storage facility. I have personally sent over four letters to the President over the last 18 months asking for his plan if he opposed any legislation pending before this body. I have received only support for the status quo.

Again, I repeat, if you were not with us before, you have reason to be with us today. The court's decision has made it clear that the status quo is not an acceptable option.

Now, Mr. President, I make a few comments for the benefit of those Senators who did not vote with us 2 weeks ago. That is, very realistically, the ratepayers in your State are getting ripped off. They paid for something, and they are not getting anything in return. Instead of saving more for their children's college fund or saving for their dream home, consumers paid into the nuclear waste fund through their individual electric bill. They paid somewhere in the neighborhood of almost \$12 billion. They have paid this money with the expectation that the Government would live up to their part of the bargain and remove the waste as it promised. But the Government simply has not performed. The waste is still there. It is near the homes, near the schools, it is near the neighborhoods. The opponents of this legislation are working to keep the status quo, and to keep the waste where it is.

I want to again run down the list of States where those Senators did not vote with us, or at least one of the Senators did, and repeat how much the consumers of those States have spent for the nuclear waste fund. The State of Arkansas has contributed \$266 million into that fund, and they receive 33 percent of their electric power from nuclear energy; California, \$645 million has been paid by the ratepayers, they receive 26 percent of their electricity from nuclear power; Connecticut, \$429



million paid in, and they receive 73 percent of their power from nuclear energy.

It is rather interesting, as well, because I was reminded by my friend from Idaho that we build various submarines in Connecticut; after they are decommissioned they are cut up, and various parts of the reactors go to Hanford, where they are buried, and the fuel goes to Idaho, where they are currently stored. The point is, Mr. President, we all have an interest in this issue of what to do with nuclear waste.

Florida, \$557 million from ratepayers, for receiving 18 percent on nuclear energy; Massachusetts, \$319 million paid by the ratepayers, 14 percent dependent on nuclear energy; Maryland, \$257 million, 24 percent of their power is nuclear; New York, \$734 million ratepayers in New York have paid into the fund and they are 28 percent dependent on nuclear energy; Ohio, \$253 million has been paid in, 7 percent dependent on nuclear energy; Wisconsin, \$336 million paid by the ratepayer, 23 percent of their energy comes from nuclear.

There are other States with no nuclear plants that, nevertheless, depend on nuclear power from neighboring States, and they have also paid into that fund. Those States are: Delaware, \$29 million; Indiana, \$288 million; Iowa, \$192 million; Kentucky, \$81 million; New Mexico, \$32 million; North Dakota, \$11 million; Rhode Island, \$8 million. Mr. President, that adds up to a total of \$4.537 billion. That is a lot of money to throw away without results. That is not our money, Mr. President; that was money collected from Americans to deal with nuclear waste.

Do we really want to tell consumers from those States that after allowing this money to be taken from their electric bills, we are not going to use that money to solve the nuclear waste problem? Do we want to tell consumers that we are going to make them pay, once again, for additional waste storage at reactor sites, or that we will expose them and all taxpayers to tremendous liabilities arising out of the court cases I mentioned earlier? The extent of these liabilities are very difficult to estimate, but we know they are going to be high.

There are yet other reasons to join us in supporting this amendment, and I appeal to my colleagues. After the 65-to-34 cloture vote on the motion to proceed to Senate bill 1936 2 weeks ago, we received many constructive suggestions for improving the bill.

Amendment No. 5055 would replace the text of Senate bill 1936 with new language and incorporate these changes. The most important of the changes are as follows:

A role for the EPA. The amendment provides that the Environmental Protection Agency shall issue standards for the protection of the public from releases of radioactive materials from

a permanent nuclear waste repository. The Nuclear Regulatory Commission is required to base its licensing determination on whether the repository can be operated in accordance with EPA's radiation protection standards.

Another issue was transportation routing. The amendment includes the language of an amendment that was filed by Senator MOSELEY-BRAUN, which provides for further assurance of the safe transportation of these materials by requiring the Secretary of Energy to use routes that minimize, to the maximum practical extent, transportation through populated and sensitive environmental areas.

Elimination of civil service exemption. As requested by Senator GLENN, the amendment strikes the provisions in title VII that would have exempted the nuclear waste program from civil service laws and regulations.

Elimination of train inspection limitation. The amendment includes language provided by Senator PRESSLER that strikes any reference to who shall perform inspections of trains. This is to address concerns that the language in Senate bill 1936 would change existing law with regard to train inspections.

Clarify scope of the Department of Transportation training standards. The amendment clarifies that the Nuclear Regulatory Commission has primary authority for the training of workers in nuclear-related activities. However, the Department of Transportation is authorized to promulgate worker safety training standards for removal and transportation of spent fuel if it finds that there are gaps in the NRC regulations.

Next, Mr. President, is elimination of permanent disposal research provisions. This amendment eliminates the section requiring the Department of Energy to establish an office to study new technologies for the disposal of nuclear waste.

Elimination of budget priorities. This amendment eliminates a section providing that the Secretary must prioritize funds appropriated to the nuclear waste program to the construction of the interim storage facility. This provision, obviously, is no longer needed in light of DOE's reevaluation of its budget requirements for the program.

Elimination of direct reference to Chalk Mountain route. The amendment eliminates the reference to the map outlining the heavy haul route through Nellis Air Force Base. The amendment simply provides that the DOE must use heavy haul to transport casks from the intermodal transfer facility at Caliente, NV, and does not specify any particular route.

Remove failure to finalize viability assessment as a trigger for raising size of phase 2. Senate bill 1936 provides that phase 2 of the interim storage fa-

cility will be no larger than the 40,000 metric tons of spent fuel, but provides a series of triggers that will allow the Department of Energy to expand the facility to 60,000 metric tons.

The amendment eliminates DOE's failure to complete a viability assessment of the permanent repository in 1998 as a trigger, making the first trigger the license application for the permanent repository in the year 2002.

Limitation and clarification of "preliminary decisionmaking" language. The amendment clarifies that the precertification construction activities authorized by 203(e)(1) are the only construction activities that will be considered to be "preliminary decisionmaking" activities.

Further, the amendment corrects this section by indicating that the use of the existing E-Mad facility at the interim storage site for emergency fuel handling in phase 1 is considered to be a preliminary decisionmaking activity. Senate bill 1936 mistakenly refers to use of facilities use authorized another section, which was the entire interim storage facility.

Mr. President, we believe these changes, in addition to those already made in Senate bill 1936, provide additional assurance that the construction and the operation of an integrated management system will be carried out with the utmost sensitivity to environmental and safety concerns.

However, Senate bill 1936 will still allow the Department of Energy to resolve this urgent environmental problem by meeting its obligation to store and dispose of spent fuel and nuclear waste in a timely manner.

Obviously, I urge my colleagues to consider the merits of this amendment and support final passage of Senate bill 1936.

Mr. JOHNSTON. Mr. President, I understand that there may be some ambiguity in the unanimous-consent request and that it may give 4 hours to the distinguished Senator from Alaska and 4 hours to the less distinguished Senator from Louisiana. I think that would really be a good way to do it, but, unfortunately, my friends from Nevada are insistent that they be granted equal time.

So I ask unanimous consent that, to the extent there is ambiguity, the Senator from Alaska have his 4 hours, and the other 4 hours be under the control of the distinguished senior Senator from Nevada.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. Mr. MURKOWSKI. Mr. President, I believe it would be appropriate to defer to our colleagues from Nevada at this time.

How much time do I have remaining? The PRESIDING OFFICER. The Senator has 7 minutes 36 seconds.

Mr. MURKOWSKI. I am sure that my friend from Louisiana, as well as Senator CRAIG, would like to be heard

from. But I think we should perhaps go to the other side at this time.

The PRESIDING OFFICER. The Senator from Nevada, [Mr. REID] is recognized.

Mr. REID. Will the Chair advise the Senator from Nevada when he has used 10 minutes?

The PRESIDING OFFICER. Yes.

Mr. REID. Mr. President, the substitute is nothing more than a regurgitation of S. 1936. It changes absolutely nothing. It is just a rearranging of words. That is all it is. There are no constructive suggestions. It answers none of the questions that have been propounded by a number of Senators on this issue.

There has been the term used that the ratepayers are being ripped off. Mr. President, the only rip-off occurring to the taxpayers of this country would be if this travesty, S. 1936, is allowed to pass.

The substitute offered by my friend from Alaska does not address any of the substantive problems regarding the underlying legislation. This is still bad legislation, unnecessary legislation, and still very dangerous legislation. This is effectively at least the third substitute for the original bill, S. 1271. We went from S. 1271 to S. 1936 to the chairman's substitute, and now to this substitute amendment. They are all the same. There are no changes. Changing the number of the legislation will not help the substantive aspect of this legislation.

As each of the earlier versions were shown to be seriously flawed, a cosmetic substitute was offered. This amendment contains that same failed strategy—change the number and talk about the great changes in the bill. A loose examination—not a close examination—a loose examination indicates that there are literally no changes. None of these substitutes have addressed the fundamental flaws of the proposed legislation.

This version, as well as the previous one, tramples on our environment, our safety, and our health laws. There has been nothing done to answer why this legislation is necessary. It is not. There has been nothing to indicate why the risk standard is 400 percent higher than any other risk standard. There is nothing to answer why we preempt Federal law. There is nothing to answer how you are going to handle the difficult transportation problems. There is nothing to answer the most—and it is so interesting that there is never a word from the proponents of this legislation about the report to Congress from the Secretary of Energy that was filed this year by the Nuclear Waste Technical Review Board where they said, "Is there urgent technical need for centralized storage of commercial spent fuel?" And the answer is clearly no. The board "sees no compelling technical or safety reason to move

spent fuel to a centralized storage facility. The methods now used to store spent fuel at reactor sites are safe and will remain safe for decades to come."

There has never been a response to this except legislate them out of business. That is what this legislation does. If you do not agree with the proponents of the powerful nuclear lobby, then legislate them out of business. That is what they have done here.

It is also quite interesting that they have done nothing to address the results of a court case last year. They come and talk about a spin. They should sign on to one of the Presidential campaigns. The court case does not help their case. The court case settles the contractual dispute between Michigan-Indiana Power and the Department of Energy. We will talk about that later.

But in the briefs filed by the power utilities they did not even seek to relieve these people who gave the decision. There is nothing wrong with the decision. We have an amendment that is going to incorporate the results of that opinion into this legislation—but anything to confuse and to get the ideas of the powerful nuclear lobby in the eyes of the public with full-page ads in newspapers all over the country. Who pays for that?

Mr. President, I think that we should recognize that every environmental group in America—not those that are to the left nor those to the right—every environmental group in America is opposed to this legislation; is opposed to this amendment.

Public Citizen yesterday came out because it was a letter sent to Senators by the other side saying we should pass this nuclear waste bill because EPA's authority has been restored. Wrong again—false advertising. And it explains why.

Another group, National Resources Defense Council:

On behalf of the quarter million members of the National Resources Defense Council, I am writing you to urge you to oppose 1936 and the amendment. It would curtail a broad range of environmental health and safety laws. It would quadruple allowable radiation standards for waste storage. It would exacerbate the risk of transportation of nuclear waste throughout the country. Please vote no on 1936.

Before turning this over to my colleague from Nevada, Mr. President, I want to refer to part of a letter that was sent to all Senators last week. Here is part of the language from it.

S. 1936 is a bill only a polluter could love. The measure attacks the Environmental Protection Agency, curtails Federal environmental regulations, preempts State laws . . .

And I should have a little editorial "exempts Federal laws.

. . . and sets a repository standard that allows four times the radiation exposure of current regulations. Oppose S. 1936.

That says it all.

I yield to my colleague from Nevada. I reserve the remainder of my time.

Mr. MURKOWSKI. Mr. President, I yield 6 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 6 minutes.

Mr. JOHNSTON. I thank my colleague.

Mr. President, this may be the last bill that I will floor manage as a U.S. Senator. It happens to be on a subject matter that it has fallen my lot to deal with for some 20 years now—dealing with nuclear waste. It is a lot that has fallen to me because of jurisdictions on the committees of which I have been involved.

I have not enjoyed being in opposition to my friends from Nevada who have done an absolutely marvelous job with an absolutely bankrupt case in my view which means that the people of Nevada to the extent they agree with their Nevada Senators ought to be greatly appreciative of the excellent job they have done, as I say, with a weak case. When I say a weak case, Mr. President, the amazing thing to me is that Nevada can be so opposed to having a nuclear waste site when at the same time they have been so anxious to have a nuclear test site for exploding nuclear bombs because with nuclear bombs all they did was dig a hole and shoot the bombs underground—some even as low as the water table—hundreds of these nuclear tests that involved all of the radioactivity materials that are present in nuclear waste: Thorium, cesium 137, strontium 90, plutonium—all of these daughter elements of a nuclear explosion, the same thing as you have in nuclear wastes. Nevada was not only willing to have these nuclear tests but anxious to have the nuclear tests.

As chairman of the Energy and Water Appropriations Subcommittee I sit shoulder to shoulder with my friends from Nevada, the Senators from Nevada, in seeking more nuclear tests. My motive was that I thought we ought to have reliability and safety in our nuclear arsenal and, therefore, a few years ago I proposed that. My friends from Nevada argued the same thing and also argued the economy of Nevada in seeking additional tests.

Mr. President, when you have these explosions which leave a cavity in the ground with all of these—cesium, strontium, et cetera—in the cavity, it is not sealed over by a waste package. We hope and we believe that these waste packages may be good for 10,000 years, even if they were thrown somewhere where they had exposure to the water. We think that the waste package itself is going to be sufficient. And, moreover, in Yucca Mountain the waste packages will be buried some 200 meters above the water table. So it is many times better, if you are concerned about the contamination of the ground and the water, it is many times



better to have a nuclear waste site such as Yucca Mountain than it is to have a test site.

That is common sense—absolutely common sense—because, on the one hand, you have the explosion, some in the water table, and hundreds of these explosions. On the other hand, you have a Yucca Mountain which is 200 meters that is more than 600 feet above the water table in one of the driest places on the face of the Earth.

So we start with that, Mr. President. That is why I say my colleagues from Nevada have an exceedingly weak case.

On the question of the pending amendment, to say that it eviscerates the role of EPA is just not correct. We set the standard at 100 millirems which is the same standard that you have for the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the United States Nuclear Regulatory Commission, the Environmental Protection Agency, and the International Atomic Energy Agency. That is where we get the 100 millirems.

What we say is, if EPA believes that poses an unreasonable risk to health and safety, we give to EPA the right, the duty, and the mandate to set it at such level as they think will protect health and safety.

So, Mr. President, that argument simply does not hold water.

Moreover, I would say, Mr. President, that, again to compare it to the nuclear test site, it is exceedingly more safe than the nuclear test site.

We have upwards of 40,000 metric tons of nuclear waste in some 70 sites around the country. If we do not put away this waste in an interim storage facility, then it will take, according to testimony before the Energy and Natural Resources Committee, some \$5 billion to build what we call dry cask storage, which, according to the Court of Appeals of the District of Columbia in a decision just last week, is the responsibility of the Federal Government. So what we are dealing with on this interim storage facility is a \$5 billion bill to the United States of America.

We are told in letters from the administration that if we build this interim storage facility, we may have to move the waste twice.

Not so, Mr. President. The present legislation on which we will vote very clearly states that you may not begin construction on the interim facility until and unless the repository, that is, the underground facility, is declared to be suitable, or I think the word is viable, which is a defined word in the legislation. So that not until 1998, when the nuclear waste administrator says he can and will make that decision, may you begin construction on the interim facility. So by that time we will know whether or not this is a suitable facility for the repository.

Why do we say pick the facility now and begin construction? Simply because we have about 2½ or 3 years of what we call long-lead-time items which are necessary before you begin construction—such things as the environmental impact statement, the design, picking the routes of transportation. Those things can and should be done at this point so as to save the billions of dollars that are involved.

We urge Senators to vote for the pending amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MURKOWSKI. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MURKOWSKI. Mr. President, recognizing there is time on the other side, I anticipate a vote on the pending amendment at the conclusion of the Senators from Nevada speaking on this amendment, because I think our time has just about expired.

How much time do we have?

The PRESIDING OFFICER. The Senator is correct. Time has expired.

Mr. MURKOWSKI. I thank the Chair. So all Senators should be advised that will be—I guess the Senators from Nevada can give us a better idea, but I would imagine 15 or 20 minutes.

Mr. BRYAN. May I inquire of the Chair as to how much time remains?

The PRESIDING OFFICER. The Senators from Nevada have 24 minutes remaining.

Mr. BRYAN. I thank the Chair.

Mr. President, let me just make a couple of preliminary observations.

Our good friend, the distinguished senior Senator from South Carolina, rose this morning to express his strong support for this legislation. I say with great affection and great respect that the irony of his position could not have been more acute. In this morning's *Energy Daily*, we read that the State of South Carolina, the State that he has so ably represented and defended since 1954, has filed suit against the Department of Energy because they are concerned about safety standards as it relates to the shipment of foreign nuclear fuel into the State of South Carolina.

I guess I would have to repeat, Mr. President, an old expression that I think would be understood down home: "What's sauce for the goose ought to be sauce for the gander." I respect and greatly admire the Senator's concern about the health and safety of his own State. I just wish he shared that same perspective in terms of the health and safety of the entire Nation, because that is one of the principal objections we have to this piece of legislation.

Let me in the time that I have try to address the issues that were so fun-

damental to the debate in S. 1936, because, as my senior colleague has pointed out, with respect to the core issues nothing has changed. There has been some language that has been massaged, but nothing has been changed.

Let me take my colleagues for a great leap through the bill itself. We have expressed strong opposition, not on behalf of Nevada but on behalf of the Nation, to a piece of legislation that would effectively emasculate major pieces of the environmental legislation that affects all Americans. The National Environmental Policy Act provides the framework for making major policy decisions that affect the environment, and nobody denies that the legislation before us, the siting of an interim storage facility, has profound implications in terms of its impact.

So here is what we have in the act itself under section 204. OK, first of all, and I paraphrase, it says, "The National Environmental Policy Act shall apply." That is like saying the Constitution and the Bill of Rights shall apply. And then it goes on to say that such environmental impact statements shall not consider the need for interim storage, the time of the initial availability of interim storage, any alternatives to the storage, any alternatives to design criteria, the environmental impacts of the storage beyond the initial term.

We are talking about something that lasts tens of thousands of years, and they are talking about something that would be limited to the initial term of the license, which is a matter of years.

Then they go on to deprive the court of jurisdiction to review the environmental impact statement as it is being developed, and then goes on to say, in what is the height of arrogance—our colleagues have railed against the costs that have been incurred over the years in seeking a solution to the disposition of high-level nuclear waste. Much of those costs have been incurred as a result of unrealistic time lines generated by the zeal of the nuclear utility industry in America. The storage of interim waste has been for more than 30 years their Holy Grail. That is what they want, and the only reason we are having this debate today is because the nuclear utilities want interim storage. But the irony and the ultimate travesty that I refer to is, after talking about the environmental policy act, it goes on to say none of the activities carried out pursuant to this paragraph shall delay or otherwise affect the development or construction, licensing or operation.

So, yes, the Constitution and the Bill of Rights by way of analogy would apply, but the amendments that all of us rely upon for our protection, by way of analogy, would not apply here.

So far as the contention has been made that there has been an effort to

address environmental concerns, that is simply false. And I will not take the time at this point, but we will discuss it in more detail.

The letter sent by the Administrator of the Environmental Protection Agency makes a very compelling argument. So for the purposes of this act, we, in effect, wipe out the National Environmental Policy Act.

Let me go on and talk about the standards because we have talked a good bit about that.

The standards that we are concerned about are the radioactive exposure standards. Nowhere in the world, for no other project on the face of the Earth is a radiation standard—if I could get that chart—no other place in the world do we have a radiation standard that proposes 100 millirems from a single source. No place.

The EPA safe drinking water standard is 4; the WIPP standard is 15. Let me refresh my colleague's memory. In this Congress, this year, our distinguished colleague from New Mexico got up, and properly so, expressed concern about EPA's ability to establish standards for the WIPP facility, the repository for transuranic waste.

The National Academy of Sciences has recommended between 10 and 30 millirems of exposure. What do we have in Nevada? Mr. President, 100 millirems. That is just simply unconscionable. That is simply unconscionable.

Oh, yes, they say, the EPA is brought back into the process. Not as one would expect it. That is the standard unless they are able to disprove that 100 millirems would have no adverse impact on health and safety, another concern raised by the EPA, which makes no equivocation at all about the fact that that presents a public health risk. Every Member in this body, whatever his or her view is on an interim storage facility, should be concerned as Americans about what is being done with respect to this provision.

Moreover, the EPA is restricted and the NRC is restricted in terms of how to apply the standards. We will talk a little bit more about that during the course of this debate. The National Academy of Sciences has indicated, as one example, that there are health and safety concerns for 10,000 years and beyond. The statute we are being asked to consider in this very amendment would limit the ability to consider this only to the first 1,000 years. That is not the most critical time. It is after 1,000 years that the canisters are supposed to fail and then it migrates into the underground repository itself.

I could go on and on. We have talked about the preemption. Make no mistake, I say to my colleagues, this amendment in effect preempts the environmental laws of America, all of these provisions here. I will not take time to read all of them because we are

under some time constraints on this amendment. Look at them: Federal Land Policy Act, RCRA, clean air, clean water, Superfund. None of those apply if they are in conflict with the provisions of this act, none. This is simply an outrage, whatever one's view is about transporting nuclear waste across the country, and much more will be said about that later.

The fiscal impact of this has been discussed. I want to comment briefly on this. It has been clear since the very beginning of the Nuclear Waste Policy Act of 1982, that the fundamental premise of that act, as contained in all the provisions, indicates the first and primary responsibility from a financial point of view will be the utilities' themselves. That is the first and foremost responsibility. This amendment very cleverly changes that.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 14 minutes remaining.

Mr. BRYAN. It very cleverly changes that. Remember the premise in the 1982 Nuclear Policy Act itself was the responsibility will be that of the utilities, in terms of the financial responsibility. Repeatedly—over and over again.

The responsibility goes far beyond the initial licensing period. We are talking about something that lasts for tens of thousands of years. But this is why this is the nuclear industry bail-out or relief act. What they have done is limited the liability of the utility by saying, until 2002, the maximum amount that can be contributed into the nuclear waste fund, a fund that is generated by a 1 mill levy on each kilowatt hour of energy generated, will be 1 mill.

The people who have looked at that, the General Accounting Office and others, have concluded that the fund currently is underfunded between \$4 and \$8 billion. It gets better. After the year 2002, the utilities' liability is further limited to the amount of the annual appropriation. So there is nothing that is being done with respect to the long-term implications of this piece of legislation, in terms of the storage of nuclear wastes.

Let me be clear that by the year 2033, for the utilities, nuclear utilities that are currently licensed, those licensing periods expire. What this means is that the American taxpayer, people who have never received 1 kilowatt of nuclear-generated power, will pick up the balance. Let me be clear on that. Historically, since the establishment of the Nuclear Waste Policy Act, it has been the financial responsibility of the utilities to handle the storage, the financial responsibility. This now changes dramatically and there are limitations—the 1 mill limitation and, after the year 2002, only the amount that is appropriated. This year, for ex-

ample, that would have been roughly one-third of a mill. The balance all shifts to the taxpayer. So, you talk about an unfunded mandate on the American taxpayer, this is it.

Let me respond briefly to a couple of comments that were made, and I know our time will conclude. First of all, our friend from Louisiana makes the point that Nevada has hosted the Nevada test site and nuclear detonations have occurred there for many years. I hope none of us is going to be penalized because Nevada, as part of the national defense effort beginning during the height of the cold war in the 1950's, agreed to accept the Nevada test site. That was part of our national defense effort and Nevadans assumed that responsibility, and proudly so.

Now, with respect to the amount of radioactivity generated, all the tests conducted out there would amount to less than 1 ton. That would be the cumulative impact of all of that radioactivity. What we are talking about—

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. BRYAN. Yes.

Mr. JOHNSTON. You are speaking of the radioactivity released to the air at this point, are you not?

Mr. BRYAN. No. We are referring to the total volume of radioactivity, underground as well.

Mr. JOHNSTON. It amounts to how much?

Mr. BRYAN. One ton.

Mr. JOHNSTON. One ton?

Mr. BRYAN. Yes.

The point I am trying to make is, by way of comparison, we are talking about tens of thousands of metric tons, so the degree of risk is immeasurably greater as a result.

Let me turn next to the question of the lawsuit. Much has been made of the lawsuit. The lawsuit changes absolutely nothing, as my colleague pointed out. In point of fact, what the lawsuit said is there is an obligation on the part of the Department of Energy, and we look to the provisions of the contract to determine how that liability will be ascertained. At no time—and I emphasize—at no time was it contended by the utilities that there would be a need to commence some type of transportation on February 1, 1988. In point of fact, in the briefs, the legal briefs filed by the utilities, they make it very clear that they do not assert that there should be a mandatory injunction requiring the transfer of anything, or the movement of anything on January 31, 1998. What they say, and our amendment that we will offer later indicates that, is that becomes a matter of contract adjudication, depending upon the nature of the delay. I believe it is fair to point out the Secretary of Energy makes that point in her letter, that the lawsuit changes nothing. It is a smokescreen. The utilities did not



seek nor does the lawsuit decision require the transport of anything on January 31, 1988. At most it would require an adjustment of the fees paid by utilities into the nuclear waste fund, to the extent that they incur additional costs to expand that storage.

I might say, parenthetically, the Senators from Nevada have introduced legislation to that effect for the last 7 years. So the lawsuit means absolutely nothing.

It is plain the ratepayers are not getting what they paid for. Let me say that certainly is not the fault of the citizens of Nevada. Frankly, it is the fault of the way the nuclear utilities themselves have constantly tried to jam unrealistic deadlines, to make politics rather than science the determiner of this program. The original program suggested we should search the country, find the best site, send three sites, after they have been studied, to the President of the United States, and have the President make the determination. That did not occur. Politics—politics intervened, nuclear politics. The folks in the Northeast, and understandably, said we do not want granite in the study, so they were taken out of the equation.

The folks in the Southeast, I can understand, said, "My gosh, we don't want salt domes." So what happened in 1987—and no scientist worthy of the description of scientist would ever contend that from a scientific point of view, forcing all of the study to occur at a single site is the best from a scientific perspective, and the fact they have encountered technical problems dealing with health and safety certainly is not the fault of Nevadans.

Frankly, the decision to embark upon nuclear energy carried with it certain risks for the utilities, and part of that risk is the financial responsibility of dealing with the waste.

So I simply say to my colleagues that none of the provisions that relate to the heart and core of our concerns—the National Environmental Policy Act, the preemption provisions, the standards or the fiscal impact for the American taxpayers—not a single provision in this new amendment changes the impact from the debate that we had in S. 1936, and none of my colleagues should be misled as a result.

May I inquire as to how much time I have left?

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator has 5 minutes 53 seconds.

Mr. BRYAN. I reserve the remainder of my time.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada, [Mr. REID], is recognized.

Mr. REID. Mr. President, there has been a suggestion by my friend, the senior Senator from Louisiana, that this is a bankrupt case, the defense of

S. 1936, the opposition to S. 1936. Mr. President, the exact opposite is true. For example, the opposition to S. 1936 is supported by the President of the United States. He has done it vocally and in writing. The case is supported by the Secretary of Energy. There is a letter that will be entered into the RECORD where she vehemently disagrees with not only the underlying legislation but the amendment. No one can ever think that the Secretary of Energy would do anything to assist this Senator from Nevada. This Senator and the Secretary of Energy have been in a longstanding dispute over various issues, but her letter is direct and to the point that not only is the legislation bad, but the amendment is bad.

The Environmental Protection Agency Administrator sent a letter that is succinct, to the point, that outlines why the legislation is bad and why the amendment is bad.

The Council for Environmental Quality opposes this legislation. The Nuclear Waste Technical Review Board is opposed to what they are trying to do, and, as we talked about before, all environmental organizations.

Mr. President, let me say that the only case for S. 1936 is a powerful nuclear industry. They are the only supporters of this legislation.

The Senators from Nevada have indicated that we would not require a rollcall vote on this amendment. We have been told that the advocates of this amendment want a vote on it. I can only speak for this Senator, but this amendment does not help anything. I say to all my colleagues, it does not help anything in the underlying legislation, and it does not hurt it. It is just as bad after you adopt it as before.

My colleagues can go ahead and vote for this if they want. It makes absolutely no difference, because the ultimate test of this legislation will come on final passage when we will determine whether or not the President of the United States is going to have to oppose this legislation by veto and whether the request, the pleas by the President, the Secretary of Energy, the Vice President of the United States, the Environmental Protection Agency, the Council for Environmental Quality, the Nuclear Waste Technical Review Board and all environmental organizations are going to land on deaf ears.

I reserve the remainder of our time on this amendment.

The PRESIDING OFFICER. The Senators from Nevada still have 2 minutes 56 seconds. Who yields time?

Mr. REID. I reserve the 2 minutes 56 seconds to the underlying bill.

Parliamentary inquiry, Mr. President. Can we reserve the time on the other amendments on the bill itself?

The PRESIDING OFFICER. The Chair will state to the Senator the time will continue to roll unless the

Senator seeks unanimous consent to stop the time.

Mr. REID. Mr. President, I ask unanimous consent that all time be no longer counted against the opponents of this amendment and that, if there is going to be a rollcall, we have it.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. That is fine. We would like a rollcall vote. I have asked for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 5055. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire [Mr. GREGG] is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 12, as follows:

[Rollcall Vote No. 256 Leg.]

#### YEAS—86

Abraham	Frahm	Lugar
Akaka	Frist	Mack
Ashcroft	Gorton	McCain
Bennett	Graham	McConnell
Bingaman	Gramm	Mikulski
Bond	Grams	Moseley-Braun
Bradley	Grassley	Murkowski
Breaux	Harkin	Murray
Brown	Hatch	Nickles
Bumpers	Hatfield	Nunn
Burns	Hefflin	Pressler
Byrd	Helms	Robb
Campbell	Hollings	Roth
Chafee	Hutchinson	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Shelby
Cohen	Jeffords	Simon
Coverdell	Johnston	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Snowe
DeWine	Kennedy	Specter
Dodd	Kerrey	Stevens
Domenici	Kerry	Thomas
Dorgan	Kohl	Thompson
Eaton	Kyl	Thurmond
Faircloth	Lautenberg	Warner
Feingold	Leahy	Wellstone
Feinstein	Levin	Wyden
Ford	Lott	

#### NAYS—12

Baucus	Conrad	Pell
Biden	Daschle	Pryor
Boxer	Lieberman	Reid
Bryan	Moynihan	Rockefeller

#### NOT VOTING—2

Glenn	Gregg
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The amendment (No. 5055) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that there be a quorum

call, which I am going to suggest, and that the time not run against either the proponents or the opponents of this legislation.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. Mr. President, I object. I ask that the time run equally.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I commend the Senators who are working on this very important legislation. They have been doing an excellent job. I have the impression they are going to make good progress today. I thank, again, the Nevada Senators for their reasonableness in a very difficult situation.

The sooner we can finish this legislation, the better, so that we can move on to very important issues that are pending, such as the transportation appropriations and the VA/HUD appropriations bill. Conference reports are beginning to come back now.

I thank the Democratic leader for his cooperation in bringing this issue to this point.

#### PROVIDING FOR THE ADJOURNMENT OF BOTH HOUSES

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Congressional Resolution 203, the adjournment resolution, which was received from the House; further, that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 203) was considered and agreed to, as follows:

#### H. CON. RES. 203

*Resolved by the House of Representatives (the Senate concurring).* That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the House adjourns on the legislative day of Thursday, August 1, 1996, Friday, August 2, 1996, or Saturday, August 3, 1996, pursuant to a motion made by the Majority Leader or his designee, it stand adjourned until noon on Wednesday, September 4, 1996, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, August 1, 1996, Friday, August 2, 1996, Saturday, August 3, 1996, or Sunday, August 4, 1996, pursuant to a motion made by the Majority Leader or his designee in accordance with this resolution, it stand recessed or adjourned until noon on Tuesday, September 3, 1996, or until such

time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. LOTT. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### NUCLEAR WASTE POLICY ACT OF 1996

The Senate continued with the consideration of the bill.

Mr. REID. Mr. President, I yield such time as the Senator from Minnesota, Senator WELLSTONE, may use up to one-half hour.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for up to one-half hour.

#### AMENDMENT NO. 5037

(Purpose: To protect the taxpayer by ensuring that the Secretary of Energy does not accept title to high-level nuclear waste and spent nuclear fuel unless protection of public safety or health or the environment so require)

Mr. WELLSTONE. Mr. President, I call up amendment 5037.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota (Mr. WELLSTONE) proposes an amendment numbered 5037.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 85 of the bill, strike lines 13 through 15 and insert in lieu thereof the following:

"(a) Notwithstanding any other provision of this Act (except subsection (b) of this section) or contract as defined in section 2 of this Act, the Secretary shall not accept title to spent nuclear fuel or high-level nuclear waste generated by a commercial nuclear power reactor unless the Secretary determines that accepting title to the fuel or waste is necessary to enable the Secretary to protect adequately the public health or safety, or the environment. To the extent that the federal government is responsible for personal or property damages arising from

such fuel or waste while in the federal government's possession, such liability shall be borne by the federal government."

Mr. WELLSTONE. Mr. President, most of the time that I am on the floor I do not really use notes, or at least I do not use notes extensively. I think today what I want to try to do is read what I think is a kind of brief that I want to argue for this amendment.

Most of the debate on S. 1936 will be about the environmental policy ramifications of the bill. I know we will learn a great deal about that today. While these are important points—I view them as very important points—there is another very significant part of this debate. I am referring to the implications of this bill for the taxpayers, particularly future taxpayers.

I hope that if my colleagues are not able to listen to the statement, that their staffs will and that these words will be given serious consideration.

As you will soon see, this bill would perpetuate a flawed policy that has set up the future taxpayers of America, I fear, for a potentially infinite liability.

Mr. President, section 302 of the Nuclear Waste Policy Act of 1982, subsection (a), paragraph 4, states what has long been accepted as nuclear waste policy, that nuclear utilities shall pay a fee into a fund to "ensure full cost recovery" for costs associated with the nuclear waste program. Indeed, an earlier version of this very bill, introduced as S. 1271, recited in its findings section the same basic premise: "While the Federal Government has the responsibility to provide for the centralized interim storage and permanent disposal of spent nuclear fuel and high-level radioactive waste to protect the public health and safety and the environment"—I agree with that—"the cost of such storage and disposal should be the responsibility of the generators and owners of such waste and spent fuels."

Mr. President, once you understand that simple basic and longstanding premise, you cannot help but be confused by the policy we have been pursuing for years and which is strengthened in the bill before us. That policy is to provide for the transfer of title to high-level nuclear waste from the utility to the taxpayer.

Mr. President, could I have order in the Chamber? I would appreciate it if you would ask the discussion to be off the floor.

The PRESIDING OFFICER. All discussions will be taken into the cloakroom.

Mr. WELLSTONE. Mr. President, let me explain. As I have already described, the full cost of the waste disposal program is to be borne by the generators of that waste. To implement this idea, Congress created the nuclear waste fund in the Treasury. The nuclear waste fund is supplied by a fee paid by the nuclear utilities, which



is really the ratepayer. That fee is specified in the 1982 act to be equal to "one mill," which is one-tenth of one cent per kilowatt-hour of electricity generated.

The 1982 act further gave the Secretary of Energy the authority to adjust the fee if she or he found it necessary to "ensure full cost recovery." As you can readily see, when a commercial nuclear powerplant ceases to generate electricity, it ceases to pay into the nuclear waste fund. In the next 15 to 20 years, as our current nuclear plants age, more and more of these plants will stop generating power, and the flow of money into the nuclear waste fund will begin to dry up. When no more money is flowing into the fund in the form of fees, we will know how much money we will have to pay for the full cost of the disposal program.

Now, we must ask the question: Will we have enough money? Will all those fees aggregated in the nuclear waste fund, plus interest paid out as necessary to meet the actual progress of the program, be sufficient to cover all the actual costs of storing high-level nuclear waste until it is no longer a threat to public health and safety and the environment, perhaps as long as 10,000 years? Are we going to be able to cover the cost?

I will share with you the opinions of the experts on that question in a moment, but first let me tell you who is stuck with the tab if the nuclear waste fund is not sufficient. Because our nuclear waste policy provides for title to the waste to transfer from the utility to the Federal Government, which translates into taxpayers—it is you and me, or at least our families in the future—who are going to be stuck with the bill. You see, it is the transfer of the tab which the nuclear utilities are really working for.

Moving the waste in Nevada is important to them, but I am not sure that is the real prize. What they really want is to be free and clear of the stuff because they know that there is a fair chance that disposal costs will be greater than what they are currently saying it will be. When their plants are shut down and they no longer pay the fee into the fund, they want to make sure that the taxpayer cannot come back to them to pony up some more. If the Department of Energy holds title, the waste is no longer the utility's problem, but it is the taxpayers' problem, and it is a potentially huge one.

Let us see if this is a real problem. After all, Mr. President, if everybody agrees that the fund will be adequate, then there will not be any taxpayer liability to worry about.

Mr. President, could I have order, please, on the floor, and could I ask my colleagues to please cease discussion?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WELLSTONE. Mr. President, the question then becomes whether there will be a real problem. After all, if everybody agrees that the fund will be adequate, the question is whether there is going to be any taxpayer liability to worry about. The Nuclear Waste Technical Review Board in its March 1996 report to the Congress states:

In a discussion of costs, however, the board believes a more important question is whether the nuclear waste fund is adequate to pay the cost of disposal as well as previously unanticipated long-term storage. Although the Department of Energy has not yet made a new formal determination of the fund's adequacy, in a presentation before this board, analysts who conducted an independent function and management review of the Yucca Mountain project suggested that the nuclear waste fund as currently projected would be deficient by \$3 to \$5 billion.

In a June 1990 report, the General Accounting Office estimated, depending on varying inflation rates and numbers of repositories needed, a potentially huge shortfall—up to \$77 billion. The report states:

Unless careful attention is given to its financial condition, the nuclear waste program is susceptible to future budget shortfalls. Without a fee increase, the civilian waste part of the program may already be underfunded by at least \$2.4 billion in discounted 1998 dollars.

That is the GAO report of 1990.

Now, Mr. President, in fairness—and I am trying to present a rigorous analysis for my colleagues—there is no consensus on whether the fund will be adequate. The Department of Energy believes that it will be. The nuclear industry likewise is quite adamant that the fund will be sufficient. But, of course, estimating fund adequacy is a very complicated matter, and reasonable people can have different views.

There are two basic elements to determine if the fund will be adequate. First, there is a total lifetime cost estimate for the disposal program. Depending on how far out you wish to run it, this could require making estimates for thousands of years. DOE's latest life cycle cost estimate—this is September 1995—estimates costs for only 88 years, from the beginning of the program in 1983 through the expected end year of the program, which is 2071, when the repository is decommissioned. This, of course, assumes that the repository is built, loaded, and closed on schedule, I might add, a very questionable assumption.

Cost estimates also depend on the elements of the program, including whether there will be both an interim facility and a permanent repository. In the Department of Energy's 1995 estimate, it is assumed that the program will only include a permanent repository. They were not even talking about the interim storage facility.

The second element to determine fund sufficiency has to do with the supply side of the question: how much

money will be put into the fund through fees. Because the fees are based on generation of electricity, this estimate is inextricably tied up with the life expectancies of existent nuclear powerplants and their level of electricity generation. What if the plants do not get relicensed? What if they shut down prematurely because of economic considerations or safety issues associated with aging reactors? So far, no plant has lasted to the end of its license. That is a point worth emphasizing. What if the plants have long outages and thus generate less power? The Department of Energy assumes all plants operate for their full 40-year license with no renewal and that their generating efficiency improves over time.

In the end, Mr. President, I think we all have to realize that any estimate of fund adequacy is tentative at best. As Daniel Dreyfus, Director of the Office of Civilian Radioactive Waste Management of DOE, put it last April, addressing the adequacy of the fee to ensure a sufficient fund:

Any such fee adequacy analysis must, of course, be based upon a number of assumptions about the near and long term future. Some of the most important are the projected rate of expenditure from the fund which in turn impacts the interest credits accruing from the unspent balance, the assumed future rates of interest and inflation, and the assumed number of kilowatts of nuclear power still to be generated and sold. Significant deviations from these could result in errors in either direction that would warrant changes in the fee.

Mr. President, what my amendment would do—we now have established that the fund, which is the utility companies' fund, may not be sufficient, and some believe we are headed for a significant shortfall. The evidence is irrefutable on that point.

Here is where we get to the crux of my amendment. If there is a shortfall, who is going to pay for it? The answer is that the owner of the waste, the title holder, will pay for the shortfall. If title transfers to the Department of Energy, the taxpayers in this country are going to be on the hook. It is the taxpayers who are going to end up having to pay the costs.

The amendment I offer today would protect the taxpayer from such an uncertain fate. My amendment would simply prevent the Department of Energy from accepting title to the waste unless accepting title was necessary to protect the public health and safety and the environment. For people concerned about liability for damage from an accident caused by DOE once the waste is in the Government's possession, my amendment would ensure that the DOE is, indeed, liable for such damages.

All this amendment does is protect taxpayers from shouldering the burden of waste disposal costs after the fund runs out. That burden should remain

with the utilities. That was the intention and that is the way it ought to be. We do not know the cost over 10,000 years, and this transfer of title through the sleight of hand transfers a huge potential unfunded liability to taxpayers in this country.

I have heard my colleagues argue that ratepayers and taxpayers are indistinguishable. That is not true. In other words, some folks seem to believe that changing the law to make sure that the utilities pay for the out-year liability is pretty much the same as if the taxpayer is directly on the hook for it as current law and this bill would have it.

That is simply not so. Ratepayers are people who currently use nuclear-generated power. Taxpayers are everybody. All ratepayers are taxpayers but not all taxpayers currently use nuclear-generated power. Ratepayers are a subset of taxpayers. Ask people in northern Minnesota whether they ought to be held as liable for a fund shortfall as, for example, somebody in the Twin Cities. Ask somebody in Montana if they feel they should pay as much for waste disposal as somebody in a more heavily nuclear State.

Mr. President, this bill, as I have stated already, would provide for title to transfer to the taxpayer. That is what this bill is about. I think that is a very flawed premise in this bill. While that is also part of the current law, the bill throws in a new twist. Under S. 1936, title transfers even sooner than under current law. Current law has title transferring when DOE accepts the waste for permanent disposal. In other words, title does not transfer until we actually have a permanent place to put it. S. 1936, however, does not wait. This bill puts the taxpayer on the hook as soon as the Department of Energy takes it off the utility's hands for interim storage.

That is what this is about. As I have already indicated, the level of the fee is integral to any estimate of fund sufficiency. Current law allows the Secretary of Energy to adjust that fee, if necessary, to ensure fund sufficiency. Despite the General Accounting Office and other estimates, this bill would remove that authority, effectively freezing the one-mill fee, which has never been changed or pegged to inflation in statutory language. Thus, even if the Department of Energy does ultimately estimate that the fund will experience a shortfall, the Secretary cannot even act to prevent it to protect taxpayers from accepting the liability.

Finally, Mr. President, this bill would require a significant up-front expenditure from the fund to pay for construction of an interim storage facility, something that was not considered by the DOE in its latest assessments of fund sufficiency. As has already been explained, interest buildup from the unspent fund balances is a key compo-

nent ensuring fund sufficiency. With large early expenditures, there will obviously be less interest accumulated and the fund will be less able to cover long-term costs.

This amendment is all about responsibility. It is all about making sure that costs are allocated to those who should bear them. It is all about deciding who should be on the hook when shaky estimates of costs well into the next century and beyond prove, as they invariably do, to be off the mark. We do not know what the costs are going to be. The estimates are very shaky. Yet what we are doing through this bill is essentially transferring all of the liability to taxpayers in this country.

Less than a month ago, in discussing this issue on the floor of the Senate, one of the chief sponsors of the bill, the Senator from Idaho, said, "It is irresponsible to shirk our responsibility to protect the environment and the future for our children and grandchildren." I could not agree with him more. But protecting our children and grandchildren also means protecting their wallets, as I am sure he would agree. We have spent an enormous amount of time and effort in the past few years cutting the deficit and moving toward a balanced budget, in large part to protect future generations. Let us have some consistency. Let us keep that goal in mind. Let us not stick future generations of taxpayers with a potentially enormous liability. Let the title to nuclear waste stay with those who generate it. That is what this amendment says.

It is simple. It is straightforward.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 12 minutes and 11 seconds.

AMENDMENT NO. 5037, AS MODIFIED

Mr. WELLSTONE. Mr. President, I may reserve the remainder of my time but, before I do, if I could, I ask my amendment be modified to effect the changes in page and line at the desk, necessary because of the adoption of the amendment of Senator MURKOWSKI.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5037), as modified, as follows:

On page 52 of the bill, as amended by Murkowski amendment No. 5055, strike lines 15 through 16 and insert in lieu thereof the following:

"(a) Notwithstanding any other provision of this Act (except subsection (b) of this section) or contract as defined in section 2 of this Act, the Secretary shall not accept title to spent nuclear fuel or high-level nuclear waste generated by a commercial nuclear power reactor unless the Secretary determines that accepting title to the fuel or waste is necessary to enable the Secretary to protect adequately the public health or safety, or the environment. To the extent that the Federal Government is responsible for personal or property damages arising from such fuel or waste while in the Federal Government's possession, such liability shall be borne by the Federal Government."

Mr. MURKOWSKI. I believe we have a half hour on our side, Mr. President? The PRESIDING OFFICER. That is correct.

Mr. MURKOWSKI. It is my intention to yield to the distinguished Senator from Louisiana 15 minutes and the Senator from Minnesota 5, the Senator from Idaho 5, and I will use the other 5 at the conclusion. And that takes care of our side.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment of the Senator from Minnesota is based upon two profoundly wrong assumptions. The first assumption is that the Federal Government, acting through this Congress, has the right to take away vested rights of American citizens or American corporations. It is such an item of Hornbook law—and I might add fundamental fairness—that vested rights are enforceable in the courts, that it hardly seems worthwhile to argue that. Nevertheless, having said it is not worthwhile to argue it, let me just quote from the *Winstar* decision of the U.S. Supreme Court, decided July 1, 1996, in which it says:

The Federal Government, as sovereign, has the power to enter contracts that confer vested rights, and the concomitant duty to honor those rights. . . .

If we allowed the government to break its contractual promises without having to pay compensation, such a policy would come at a high cost in terms of increased default premiums in future government contracts and increased disenchantment with the government generally.

I could quote other equally persuasive language from this decision.

Mr. WELLSTONE. Will the Senator yield just for a moment?

Mr. JOHNSTON. Yes.

Mr. WELLSTONE. First of all, if the industry and DOE are correct, and the fund is sufficient, there would be no shortfall and there would be no damages; is that correct? The estimates of the industry is that the fund is sufficient, and if that is the case, there would be no shortfall and therefore there would be no damages.

If, in fact, there were damages—let me just ask the Senator to respond to the first question.

Mr. JOHNSTON. No, the Senator is wrong. First of all, damages would not be paid from the nuclear waste fund. Damages would have to be paid from the judgment fund, provided elsewhere.

Mr. WELLSTONE. But Senator, by the very estimates you have made, by the very estimates that the utility companies have made, there would be no damages because you have said that the fund is sufficient. So there would be no damages.

Mr. JOHNSTON. I have not said the fund is sufficient. DOE has said the fund is sufficient. And many nuclear utilities do not believe it is sufficient. But the sufficiency of the fund has



nothing to do with the damages to which a utility would be entitled. The fund could be more than sufficient and a utility would be entitled to damages based upon whether the Government had violated a vested right.

Mr. WELLSTONE. I thank the Senator.

Mr. JOHNSTON. Would the Senator agree with me, first of all, the Government has no right to violate a vested right of the utilities?

Mr. WELLSTONE. My response would be, if it was decided by the courts that this amendment improperly breaches preexisting contracts, then presumably the utilities would be able to recover damages from the Government. However, I want to point out one more time that if the industry and the DOE are correct, that the fund is sufficient, there would be no shortfall and therefore there would be no damages. That would be up to the courts to decide.

Mr. JOHNSTON. Let us take this one at a time. You agree with me the Government has no right to take away vested rights, and would be liable for the violation?

Mr. WELLSTONE. I have said, unless they pay damages. But I have also made it clear the courts would decide that and I have also made it clear that by the very estimates of the utility industry, this is the very question that is in doubt, that there would be no damages because there would be no shortfall.

Mr. JOHNSTON. Mr. President, the Senator has answered my first question, which I think there is only one answer to, and that is the Government cannot violate contractual rights.

The second question is what is the duty of the Federal Government with respect to nuclear waste? It so happens that the Court of Appeals for the District of Columbia has decided that very question definitively and clearly on July 23, 1996. Here is what they have said. I hope the Senator from Minnesota will not leave. What the decision said, and it is very clear:

Thus we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of spent nuclear fuel no later than January 31, 1998.

Let me repeat that:

... we hold that the Nuclear Waste Policy Act creates an obligation in DOE ... to start disposing of the spent nuclear fuel no later than January 31, 1998.

What the decision does is delineates between the duty of the Federal Government to accept title, which the court clearly says is dependent upon the completion of a nuclear repository, and the duty to dispose of the spent nuclear fuel on January 31, 1998, which is an absolute duty.

So, come January 31, 1998, the Federal Government must dispose of this nuclear waste, whether or not the facil-

ity is complete. And, if the amendment of the Senator from Minnesota were agreed to, it would have nothing to do with the obligation of the Federal Government to pay damages. The obligation of the Federal Government to pay damages and the sufficiency of the nuclear waste fund are two separate things. If, on January 31, 1998, the repository is not complete, and it will not be complete, and there are utilities which must build their own dry cask storage at their own expense, I believe it is clear, based on this decision of the court of appeals, that the Federal Government would have to pay damages. Where they would pay the damages from—I believe it would have to come from the damage fund and not from this, the nuclear waste fund, but that would be a separate item for the court to decide.

But the point is, it is very clear that this amendment cannot succeed in doing what the Senator from Minnesota says. The Senator from Minnesota says that this amendment takes the burden off the taxpayers—off the ratepayers, and puts it on the utilities.

Mr. President, that cannot be. The utilities have vested rights, recognized by the Supreme Court as late as July of this year. This very month, the Supreme Court has reiterated a very longstanding principle of law, which is that vested rights cannot be taken away by this Congress or by the courts. The utilities have a vested right to have the Federal Government dispose of their waste by January 31, 1998. You simply cannot take away that duty.

I ask the distinguished Senator from Minnesota if he agrees with my interpretation of the court of appeals' decision rendered last week in that the Federal Government has an unqualified duty "to start disposing of the spent nuclear fuel no later than January 31, 1998"? Does the Senator agree with that?

Mr. WELLSTONE. The court decision only deals with the statute, and we are changing law. I was out during part of the Senator's presentation, and I think the part of the finding of the court that you did not read I will read when I have time. So I will come back to it.

Mr. JOHNSTON. I am reading right here:

Thus, we hold that the Nuclear Waste Policy Act creates an obligation in DOE to start disposing of the spent nuclear fuel no later than January 31, 1998.

Is there any disagreement with what I read in the decision?

Mr. WELLSTONE. I don't disagree with that.

Mr. JOHNSTON. And the Senator would not disagree you can't take away that right legislatively, can you?

Mr. WELLSTONE. This doesn't take away this right legislatively.

Mr. JOHNSTON. Then how in the world can the Senator say they are transferring the duty of disposing of

nuclear waste from the Federal Government or the taxpayers and giving that to the utilities?

Mr. WELLSTONE. There is a basic distinction. You are talking about possession, and I am talking about title. I did not say there wasn't a commitment to change this in terms of possession. I read the findings of the original legislation, and I am telling you that when we had the original findings, the original bill, it was made very clear that, in fact, when it comes to title and when it comes to the actual liability of paying for this, this should be paid for by people who benefit from nuclear power, not by taxpayers across the country. Period.

Mr. JOHNSTON. The decision of the court of appeals makes clear that they have a vested right to the title passing as of the time that the nuclear repository is built and not until that time, but they have the duty to dispose of the waste January 31, 1998.

Is the Senator saying that their duty to dispose of the waste does not involve any responsibility, any duty to pay damages?

Mr. WELLSTONE. Let me just read from the decision to put this to rest and the part you did not read:

In addition, contrary to DOE's assertions, it is not illogical for DOE to begin to dispose of SNF by the 1998 deadline and, yet, not take title to the SNF until a later date.

Mr. JOHNSTON. What is the difference in liability between having the duty to dispose of and in taking title?

Mr. WELLSTONE. Dispose of has to do with possession, and title has to do with who pays for it. As a matter of fact, let me read for you, as long as this is on your time and not on my time, let me read for you—

Mr. JOHNSTON. Well, I don't want—

Mr. WELLSTONE. The original findings of the bill that you wrote.

Mr. JOHNSTON. I have limited time remaining. Mr. President, what the Senator is saying is so illogical. We have established that the Federal Government has the duty to dispose of spent nuclear fuel, and the Senator is saying that that duty carries with it no responsibility to pay damages, no financial responsibility; that that somehow stays with the title.

Mr. President, that is just not so. What the court said in the court of appeals' decision is that they are withholding the remedy until January 31, 1998, because the Federal Government would not have defaulted until that time. That is when the duty of the Federal Government to dispose of the waste ripens, January 31, 1998.

We cannot come in here and say, "Well, we're going to pass that duty on to the utilities because they are somehow at fault." Mr. President, that is just so clearly not the law. I believe that it is simply not an argument that bears any weight at all.

Mr. WELLSTONE. Will the Senator yield 1 minute?

Mr. JOHNSTON. I will yield on your time.

Mr. WELLSTONE. I appreciate it.

Mr. JOHNSTON. On your time?

Mr. WELLSTONE. That is right, for 1 minute. This does not say the Federal Government does not have the responsibility to take the waste. That is not this amendment. The Senator mischaracterizes this amendment. That is a straw-man or straw-person argument. This amendment deals with the whole question of liability.

Mr. JOHNSTON. No; it does not—

Mr. WELLSTONE. In the very court decision the Senator cited, the court did not find this to be illogical; they made that distinction. I am not arguing the Federal Government should not take responsibility. I believe we should live up to that responsibility. This is a question of whether or not taxpayers should have to pay for the liability of it.

Mr. JOHNSTON. First of all, the Senator's amendment does not mention liability.

Mr. WELLSTONE. This is not on my time.

Mr. JOHNSTON. Or the taxpayers. It simply says who has title and the fact that title and responsibility are not the same thing. I reserve the remainder of my time.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Alaska.

Mr. MURKOWSKI. I yield 5 minutes to Senator GRAMS from Minnesota.

Mr. GRAMS. Mr. President, I want to follow up on what the Senator from Louisiana was saying.

Just last week, the courts reaffirmed what the Congress and also the Nation's taxpayers have known since 1982 when this contract, this agreement was worked out, and that is, the Department of Energy has the legal obligation to begin accepting nuclear waste by January 31, 1998.

This ruling by the D.C. Circuit Court of Appeals, the second highest court in the land, marked a historic transformation in the nuclear waste debate. We are no longer discussing whether or not DOE has a responsibility to accept the waste, but how quickly we can move toward the final disposal solution.

As my colleagues know, the roadblocks have not been environmental or technological, only political. After nearly 15 years, and at a cost to the Nation's electric consumers of \$12 billion, the courts appear to have finally cleared that path.

So why are some of our colleagues still trying to raise new obstacles? Is it because they are opposed to finding a real resolution to this environmental crisis?

I cannot believe anyone would want to see nuclear waste continue to pile up in some 35 States, 41 if you include

waste produced by the Government. Many of those States' utility commissioners argue that the ratepayer had paid for the waste to be removed and stored at a single permanent site. It was the DOE's failure to live up to its end of the bargain that led to the highly publicized lawsuit against DOE.

The three circuit court judges concurred with the States' opinion and rejected the DOE's attempt to "rewrite the law." Even so, some of our colleagues want to rewrite that law today. Such amendments reject the mandatory obligation of the DOE to take title to the spent fuel in 1998. They are merely an attempt to rewrite the law under the guise that somehow ratepayers are different than taxpayers.

By vilifying those customers who are served by nuclear power facilities, the opponents of nuclear power hope to refocus the debate. Hiding behind the cloak of so-called taxpayer protection, they refuse to acknowledge the fact that moving forward with a permanent disposable program is the best way to avoid a taxpayer bailout.

In fact, entities as diverse as the National Association of Regulatory Utility Commissioners and the utilities themselves have calculated that enactment of S. 1936 would save \$5 billion to \$10 billion to the U.S. taxpayers/ratepayers.

What I find most disturbing is this false differentiation of electric customers served by nuclear utilities from the rest of the public. The idea that somehow these Americans reaped the benefit of low-cost power for years and are now somehow trying to get out of their obligation to pay for the waste is an affront to the citizens of this country.

Over the last decade and a half, Minnesotans have paid nearly \$250 million in exchange for the unmet promises that the DOE would permanently store our State's nuclear waste. Again, the Nation has paid \$12 billion, nationwide, into the nuclear waste trust fund. I believe the ratepayers have now lived up to their end of the bargain and met their financial obligation. It is the DOE that has not.

But what about those who have benefited indirectly from nuclear power? I am referring to the customers served by utilities that themselves do not own nuclear generating stations but that from time to time do purchase the low-cost nuclear power. Aren't these the same taxpayers that opponents of this bill are seeking to protect? Yet don't these individuals share some of the responsibility? This issue is clearly explained in the letter that I received from Minnesota Department of Public Service Commissioner Kris Sanda. Commissioner Sanda wrote:

For reliability reasons, our Nation's electrical grid is divided into several regional power pools. The Mid-Continent Power Pool serves our home state [of Minnesota, as well

as] North and South Dakota, Nebraska, Iowa, portions of Montana and Wisconsin . . .

In addition to ensuring the reliable delivery of electrical energy, MAPP [as it is called] serves as a clearinghouse for spot and intermediate term market for energy and capacity transactions . . .

There are certain times of day and seasons of the year when energy from those plants is sold by [a nuclear generating facility] to other utilities in MAPP . . .

So in other words, other areas of the country receive this power.

It is without question . . . that all Minnesotans benefit from [NSP's] nuclear facilities, regardless of which utility provides their power . . .

The same is true for virtually all consumers across the country, even those whose primary utility does not use nuclear fuel to generate electricity.

Therefore, responsibility for funding a permanent storage site is clearly shared by all of the Nation's power consumers. And Congress has the responsibility for ensuring that DOE builds an environmentally sound facility.

Finally, Mr. President, I think it is important that our vote to reject this amendment will send a clear message that we reject these attempts by the antinuclear forces to portray as villains the electric consumers served by nuclear generating stations. I urge my colleagues to support final passage of S. 1936.

Mr. MURKOWSKI. How much time do we have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. MURKOWSKI. Does the Senator from Minnesota wish to—

Mr. WELLSTONE. A quick response to the Senator from Minnesota.

Mr. MURKOWSKI. This is on the time of the Senator from Minnesota.

Mr. WELLSTONE. That is correct. I will take my 11 minutes now, if it is all right.

First, a quick response. This amendment has nothing to do with the Federal Government living up to its commitment to take the waste. I am in favor of that. This amendment has to do with who pays the cost over 10,000 years; it has to do with tax liability. You cannot mix apples and oranges.

Let me just yield to the Senator from Nevada for 1 minute, please.

Mr. BRYAN. I thank the Senator.

I call my colleagues' attention to this. Under the Nuclear Waste Policy Act, the Department of Energy and the utilities entered into a contract. It is the contractual liability that becomes the issue as a result of the court's decision that the senior Senator from Louisiana referenced.

Under the contract provision, the remedy is spelled out. If the delays are unavoidable, there is no liability in a financial sense. The schedule for receiving shipment is adjusted accordingly. If it is determined that the Department of Energy has been responsible for the delay, an adjustment is



made with respect to the fees that are paid into the nuclear waste trust fund. So those are the remedies that are provided. I thank the Senator from Minnesota for yielding me time.

Mr. WELLSTONE. How much time is remaining for this Senator?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. MURKOWSKI. I yield 5 minutes to the Senator from Idaho, Senator CRAIG.

Mr. CRAIG. Mr. President, I thank my chairman for yielding, and let me thank him for the work he has done on this legislation and the effort that has been put forth by the senior Senator from the State of Louisiana, to bring us to where we are at this moment.

I do not oftentimes do this, but I think it is time to speak to the citizens of Minnesota, because their Senator has produced an amendment that in my opinion reverses a longstanding Government policy. This amendment purports to release the Government from its obligation to take the waste.

The Senator from Minnesota calls this a taxpayers' protection amendment. What he does not tell us is that it would nail the ratepayer, the ratepayers of his State. For instance, it would force the people of Minnesota who have already paid over \$229 million into the waste fund to pay millions more to build more storage sites at their reactors. Minnesotans have already paid twice. I believe the Wellstone amendment, if the courts upheld it, would force Minnesotans, who get 31 percent of their electricity from nuclear power, to pay again and again.

Last week, the U.S. Court of Appeals ruled that DOE has an obligation, and that has been thoroughly debated by the Senator from Minnesota and the Senator from Louisiana. It is very clear what the court said. The obligation exists. We will decide when the time comes that you have the responsibility to take it how you will take it.

This amendment, in my opinion, is unfair and it changes the rules in the middle of the game. It damages tremendously the citizens of the State of Minnesota who have already invested heavily in what they believed was the Government's role in taking care of this waste issue. In fact, the courts held that the Congress cannot change the contractual obligations of the Government, precisely because it would not be fair. If we were to be able to do something like this, no one would ever sign a contract with the Federal Government. Let me repeat: No one would ever sign a contract with the Federal Government if the Congress could come along, willy-nilly after the fact, and change the rules.

This amendment is little more than an effort to kill the bill—I do not think there is any doubt about it—that is the source of 22 percent of our Nation's

electrical power and 31 percent of the electrical power for the State of Minnesota. That would be, in my opinion, one of the worst environmental votes we could make.

Minnesota nuclear power plants have reduced Minnesota's carbon dioxide emissions by 3 million metric tons in 1995, and by 55 million metric tons from 1973 to today. Last year, nuclear power in Minnesota displaced 118,000 tons of sulfur dioxide and 53,000 tons of nitrogen oxide.

Following Senator WELLSTONE's prescription, if that is what the Congress chooses to do and what becomes law, could result in more emissions of acid rain and more carbon emissions than the climate could tolerate.

Somehow we have to also talk about the tremendous advantage the citizens of Minnesota have received from the clean source of power, 31 percent of their power, the electrical power. Now, today, we are insisting by this legislation, a process that allows us to adhere to what the courts have said is our contractual relationship with the ratepayers of our country who receive the benefits of nuclear power, and to do something positive for the environment, to do something that will say this country is going to be responsible in the management of high-level nuclear waste in a way that is optimum science, in a way that maximizes our pledge and our responsibility to the citizens of this country.

I hope my colleagues will vote with me in tabling the Wellstone amendment. We need not kill the process. We need not stick the citizens of Minnesota with additional millions and millions of dollars where they are going to be forced to either build additional storage facilities or turn their lights out.

I yield back the balance of my time. Mr. WELLSTONE. Mr. President, I speak, too, to the people of Minnesota, but will speak first of all to the Senator from Idaho.

Mr. MURKOWSKI. How much time is left on the other side?

The PRESIDING OFFICER. The Senator from Minnesota has 2 minutes, the Senator from Alaska has 6½ minutes.

Mr. WELLSTONE. I will take 1 minute to respond.

The Senator wants it both ways. First he says the utility companies are absolutely right, the fund is sufficient to cover the costs. Now he is saying the ratepayers of Minnesota will have to pay all this additional money with his scare stories.

First the utility companies say this fund is sufficient to pay the cost. So, if that is the case, Senator, there will be no additional cost. But if the fund is not sufficient, over 10,000 years, then, Mr. President, the question is, who pays the costs? People in Minnesota believe that, as a matter of fact, the people who benefit pay the cost.

I come from a State with a standard of fairness. Nobody wants to see an unfunded liability transferred by sleight of hand to taxpayers everywhere all across this country, period.

As far as the environment is concerned, Senator, since you were a bit personal and I will not be too personal, I would be pleased to match my environmental record with your environmental record for the citizens of Minnesota to look at any day.

I reserve the balance of my time. Mr. JOHNSTON. Will the Senator yield 1 minute?

Mr. MURKOWSKI. I yield 1 minute to the Senator from Louisiana and 1 minute to the Senator from Idaho.

Mr. JOHNSTON. Mr. President, I think the Senator from Minnesota has another fundamental misconception and that is the question of the sufficiency of the fund.

DOE has said they believe the fund is sufficient to build the repository. To quote them, "The preliminary assessment which is still under management review, indicates the fee is adequate to ensure total cost recovery." That means for building the repository. That is what DOE says. I, frankly, think it is probably not going to be sufficient, in my own view, but that is what they say.

No one has said that the fund is sufficient to cover both the cost of damages to Northern States of power and other utilities all around the country and to also build the repository. That is paying twice—paying to the utilities for their own, what we call dry cask storage, and also building the repository at Yucca Mountain or wherever in the country they decide to build it.

That is the fundamental misconception, Mr. President. If you have these damages caused by the delay that Congress puts in, then clearly the fund will not be sufficient to pay for that.

Mr. MURKOWSKI. I yield to the Senator from Idaho.

How much time is remaining? The PRESIDING OFFICER. Five minutes remains.

Mr. MURKOWSKI. I yield 2 minutes. Mr. CRAIG. I thank my chairman for yielding.

This is not a question of whether the fund is sufficient. I agree with the Senator from Louisiana. I have spent an awful lot of time studying, and when push comes to shove, obviously the amendment that the Senator from Minnesota would inject into it, the question becomes, is it sufficient or not?

What I am talking about are utilities in Minnesota who no longer have storage facilities and had relied on the Government to take the high-level waste that they were paying for. My guess is that if this Senator's amendment passes, that comes into question.

Do you turn the power off or do you build additional storage facility?

Mr. WELLSTONE. Will the Senator yield?

Mr. CRAIG. No, I will not yield. The Senator has his own time.

My point is simply this: If you have changed the contractual relationship, then you have changed the obligations. If you do that, somebody else has to pay. Who has been paying in Minnesota? The ratepayers. Who would pay under the amendment of the Senator from Minnesota? The ratepayers. That is what I believe thorough study of this amendment would cause if it were to become law.

Mr. MURKOWSKI. Mr. President, I think it is important to recognize we had a very clear understanding. A deal was made, the ratepayers would pay a fee and the Government would take title of the waste, period. That was the arrangement.

We cannot and we should not at this time revisit this decision in an attempt to retroactively change the deal. That is basically the basis for the amendment from my friend from Minnesota.

Mr. President, the decision that the Government would undertake the obligation to take title was made in a previous Nuclear Waste Policy Act and is part of the contract. The utility ratepayers have paid the fees under the contract, and again the Government simply has to live up to its end of the bargain.

The Government already has title to large amounts, large amounts of spent fuel and waste that will be stored in these facilities. As a practical matter, the Government will be the deep pocket for liability for these facilities, even if did not take title to civilian fuel.

We have competition and the realization that competition brings increased uncertainty to the electrical industry. That is just a fact of business. The utilities are the corporate entities and they cease to exist. That is the reason why the Government agreed, wanted and felt compelled to take title to spent fuel in the first place. The Government will own and operate these facilities. It is unfair now for the utility ratepayers to be on the hook for a liability for facilities that they have simply no control over.

So I, again, suggest to the Senator from Minnesota that the Minnesota ratepayers have already paid twice. The Wellstone amendment, if the Court upheld it, would force Minnesotans who get, I might add, 31 percent of their electric energy from nuclear power, to pay again and again and again.

If Minnesota were to lose its dependence on nuclear energy, what would be the alternative? I think the Senator from Idaho indicated that, last year, nuclear power in Minnesota displaced 118,000 tons of sulfur dioxide, 53,000 tons of nitrogen oxide, and there is simply no other alternative, if Minnesota were to lose its dependence on nuclear energy, other than to generate power from fossil fuel.

It is fair to say that, again, Minnesota nuclear power plants have reduced Minnesota's carbon dioxide emissions by 3 million metric tons by 1995 and, I think, 55 million metric tons since 1973. What is the alternative to this if we don't have the nuclear capability that so many—roughly a third—Minnesota residents depend on?

Mr. President, has all time expired on the amendment?

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Minnesota has 1 minute remaining.

Mr. WELLSTONE. Has the Senator completed his remarks?

The PRESIDING OFFICER. Yes.

Mr. WELLSTONE. Mr. President, this amendment has nothing to do with the Government's obligation to take possession of the waste. I think the Government should. But if the fund is insufficient, somebody will have to pay for that shortfall, and that somebody is the person who holds title to the waste. DOE will have possession under my amendment, but the utilities will retain the title.

My colleagues have confused this. Of course, DOE will have possession. But the utilities will pay the title. This is not, Minnesotans and all the people across the country, about turning the lights off. That is not what this amendment is about, and my colleagues know it. It is about making sure that taxpayers don't get stuck with this unfunded liability.

The PRESIDING OFFICER. All time has expired.

Mr. DOMENICI. Mr. President, I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Minnesota [Mr. WELLSTONE].

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. ASHCROFT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 17, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—83

Abraham	Cohen	Gorton
Ashcroft	Conrad	Graham
Bennett	Coverdell	Gramm
Biden	Craig	Grassley
Bingaman	D'Amato	Gregg
Bond	DeWine	Hatch
Bradley	Dodd	Hatfield
Breaux	Domencici	Hefflin
Brown	Dorgan	Helm
Bumpers	Faircloth	Hollings
Burns	Feinstein	Hutchinson
Campbell	Ford	Inhofe
Chafee	Frahm	Inouye
Coats	Frist	Jeffords
Cochran	Glenn	

Johnston	Mack	Sarbanes
Kassebaum	McCain	Shelby
Kempthorne	McConnell	Simon
Kennedy	Mikulski	Simpson
Kerrey	Moseley-Braun	Smith
Kerry	Murkowski	Snowe
Kohl	Nickles	Specter
Kyl	Nunn	Stevens
Lautenberg	Pressler	Thomas
Levin	Pryor	Thompson
Lieberman	Robb	Thurmond
Lott	Roth	Warner
Lugar	Santorum	

NAYS—17

Akaka	Exon	Pell
Baucus	Feingold	Reid
Boxer	Harkin	Rockefeller
Bryan	Leahy	Wellstone
Byrd	Moynihan	Wyden
Daschle	Murray	

The motion to lay on the table the amendment (No. 5037) was agreed to.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5051

Mr. MURKOWSKI. Mr. President, I call up an amendment, No. 5051, which is at the desk. I ask it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 5051.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike section 501 and insert in lieu thereof the following:

"SEC. 501. COMPLIANCE WITH OTHER LAWS.

"If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act in implementing the integrated management system."

Mr. MURKOWSKI. Mr. President, this amendment contains the language previously filed by Senator CHAFEE as amendment No. 4834. This amendment originally suggested by Senator CHAFEE would soften the existing preemption language in the bill to clarify that only when another Federal, State, or local law is inconsistent, that is, when another Federal, State, or local law is inconsistent or duplicative with this act, then this act will govern. Otherwise, all previous applications of both State and Federal environmental or safety statutes continue to apply.

What we have attempted to do here is craft an amendment to ensure that there will be adequate oversight of all Federal and State and local laws, unless they are an obstacle to carrying



out the act, because the act itself stipulates that there shall be an interim storage site at Yucca Mountain under specific conditions. Some have expressed concern that this language could be interpreted to provide preemption of other laws in cases where complying with those laws were simply inconvenient or impractical. That is not the case, and it does, I think, strain the interpretation of the bill.

However, in order to address these questions, we are offering this amendment that was suggested by Senator CHAFEE. This language provides the Department of Energy must comply—they must comply—again, with all Federal, State, and local laws unless those laws are inconsistent with or duplicative of the requirements of S. 1936. There is an effort to, if you will, disguise by generalities the intent of this bill. But it mandates compliance, again, with all Federal, State, and local laws unless they are inconsistent or duplicative, duplicate the requirements.

The Nuclear Waste Policy Act of 1996 contains a carefully crafted regulatory scheme that applies to this one unique nuclear waste storage facility. Think about that: This is consistent because there is no other such facility in the country. So the policy act contains words crafted relative to the regulatory proposal that applies to only this one, unique, nuclear waste storage facility. Since we have no other, this is designed specifically for this facility. So there is no applicability to any other facility.

Our general Federal, State and local laws are intended to apply to every situation generically. So it is only appropriate that we clarify that where those general laws conflict with this very specific law that we are designing for this interim storage site, that we have carefully drafted, with the input of many concerned people, the provisions of this law, of this act, will control the process.

The vast majority of other laws will certainly not be subject to being superseded and will be complied with. A suggestion that the Department of Energy should be forced to attempt to comply with laws that conflict with this act will simply open it up to spending years of litigation on which provisions apply and is simply a recipe, Mr. President, for unnecessary delays at the ratepayers' and taxpayers' expense and I think would provide full employment for a significant number of lawyers in this country.

So I think as we attempt to address the merits of this amendment, we recognize that this is designed to address concerns that somehow this legislation, as crafted, will not cover adequately all Federal, State and local laws of an environmental nature that are, obviously, designed for the protection of the public.

Mr. President, I retain the remainder of my time and ask if my good friends from Nevada would like to have some time running. If there is any other Senator here who would like to be heard on this amendment, I would appreciate it if they will advise the staff, and we will attempt to accommodate them on time.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I yield myself 15 minutes.

Mr. President, I believe it will be helpful for our colleagues and staffs listening in, because these two amendments have been described in the abstract. I acknowledge and confess that it has been a number of years since I attended law school, but I must say, not even a flyspeck lawyer could make a meaningful distinction between these two provisions.

Let me read them, because they are quite simple. Under the language of the amendment that was offered earlier today and was approved by the body, section 501 deals with compliance with other laws. So here is the present state of the legislation as we debate it. It is only a couple of paragraphs, so I think it important it be understood:

If the requirements of any law are inconsistent with or duplicative of the requirements of the Atomic Energy Act and this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act and this Act in implementing the integrated management system.

Any requirement of a State or political subdivision of a State is preempted (1) if complying with such requirement and a requirement of this Act is impossible; (2) that such requirement, as applied or enforced, is an obstacle to accomplishing or carrying out this Act or regulation under this Act.

So, in effect, what the bill currently does is it bifurcates, it makes reference to Federal laws and then it talks about State preemption. But the operative language with respect to Federal law under the current state of the bill is that if any requirement of any law is inconsistent with the provisions of this act, it shall not apply.

By any plain reading of the language that is contained, any reasonable interpretation, that is, in point of fact, a Federal preemption.

The second part of the existing bill deals specifically with State preemption and has those two provisions. If it is impossible, then you don't have to comply with it and, second, if it is an obstacle to accomplishing or carrying out the act, you don't have to comply with it.

Here is the so-called amendment that changes all of that, that solves it that deals with the issue. Section 501, which is the amendment offered by our friend from Alaska, says as follows:

If the requirement of any Federal, State or local law, including a requirement imposed by regulation or by any other means under

such law, are inconsistent with or duplicative to the requirements of the Atomic Energy Act or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and this Act in implementing the integrated management system.

Mr. President, I say to my colleagues, it could not be clearer. One does not have to go to law school to understand that if any other provision of the law is inconsistent with this bill, it does not apply.

What provisions are we talking about? We are talking about the entire framework of the environmental laws in America that have been enacted since the early 1970's. And lest this debate be deemed to be of a partisan nature—and I assure my colleagues it is not—many of those provisions were enacted under the Presidency of Richard Nixon.

Here is what we wipe out: If, for example, the Clean Air Act is inconsistent with the bill that we are going to be asked to vote on for final passage later on today, the entire Clean Air Act does not apply.

If the Clean Water Act has any provision that is inconsistent with the provisions of this act, it does not apply.

If the Superfund law has any provision inconsistent with the provisions of the bill that we are being asked to vote on, it does not apply.

If the National Environmental Policy Act contains any provision that is inconsistent with the provisions of the bill that we are going to be asked to vote on, it does not apply.

If FLPMA, the Federal Land Policy and Management Act, has any provision inconsistent with this bill, it does not apply.

Think about that for a moment. This is truly a nuclear utility's dream. In effect, these provisions that are the framework of our environmental policy in America, most of which have been enacted over the past two decades, that none of these, not a one, not one has any force of law whatsoever if it is deemed to be in conflict with the provisions of this act.

I know that a number of my colleagues have been persuaded, and I regret that fact, that there is a great urgency and imperative to move nuclear waste. This is all, in my opinion, part of a fabricated, as the Washington Post concluded, contrived argument. They have been at this now for 16 years.

If we were looking at the CONGRESSIONAL RECORD of this very week in 1980, my colleagues, I think, would be surprised, because the thrust of the argument is identical: "Hey, we've got to have this, we've got to have it right away. Waive the acts, waive the laws, we have to get this going."

In point of fact, I call this to my colleagues' attention. CONGRESSIONAL RECORD, July 28, 1980, 16 years ago:

Mr. President, this bill deals comprehensively with the problem of civilian nuclear waste.

That sounds familiar.

It is an urgent problem—

That kind of sounds familiar, too, doesn't it?

Mr. President, for this Nation. It is urgent, first, because we are running out of reactor space at reactors for storage of the fuel, and if we do not build what we call away-from-reactor storage—

That is a little different. We call it interim storage now, but away-from-reactor storage is the same basic concept—

and begin that soon, we could begin shutting down civilian nuclear reactors in this country as soon as 1983, those predictions coming from the Nuclear Regulatory Commission and the Department of Energy.

That is 1980.

As of 1983, 13 years ago, not a single nuclear utility in America has shut down because it has run out of space. So when we use "contrived" and "fabricated," that is precisely the language to describe it.

That is why every environmental organization in America that I am aware of has examined the preemption sections and have concluded that it would be bad, bad public policy. From the Sierra Club to public-interest groups to Citizen Awareness to the League of Conservation Voters, and many, many more.

So I hear my colleagues often talk about this, the proponents of this bill, that this is an important piece of environmental legislation. Let me be clear. This is an important piece of environmental legislation, yes, because it would be a disaster repealing, by implication and by expressed language, all of the provisions that have been enacted for more than a quarter of a century as it relates to this process.

So that is why in a letter that has been sent to the Democratic leader, the administrator of the Environmental Protection Agency, Ms. Browner, has specifically referenced the fact that this would be a preemption.

I quote her letter when she indicates:

EPA is also concerned with provisions of S. 1936 and the substitute amendments—

The one that we are addressing right now—

which preempt the environmental protections provided by other environmental statutes. Section 501 in the bill and amendment preempts all Federal, state, and local environmental laws applicable to the Yucca Mountain facility if they are inconsistent with or duplicative of the [specific piece of legislation we are talking about].

So I think that the colleagues who want to say to themselves, well, in this debate who has more credibility with respect to whether or not this is preemption? The agency under the law, the Environmental Protection Agency's Administrator has been very clear. It is clearly a preemption. The environmental organizations in America who have looked at this all have concluded that it is a preemption and, for that

reason, would be an environmental disaster.

But may I say, just plain ordinary English, just read it. It could not be clearer. "If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act \* \* \* or of this Act, the Secretary shall comply only"—only—"with the requirements of the Atomic Energy Act \* \* \* and of this Act \* \* \*."

So, Mr. President, I think it is beyond refutation, beyond argument. Why is that important? My colleague from Nevada, in a moment, will expand upon one aspect of that, and that is the transportation issue.

Let me just say, to give a little flavor of this, that it is contemplated, under this piece of legislation that would create an interim storage facility, that 85,000 metric tons of fuel would be shipped from existing commercial reactors and transported to the Nevada test site in Nevada. That is about 6,200 shipments by truck, about 9,400 by rail. Some have indicated those numbers understate the amount.

Each truck cask weighs 25 tons, each rail cask up to 125 tons. Each rail cask—that is the one that is 125 tons—contains the radiological equivalent, in terms of long-life radiation, of 200 Hiroshima bombs. So when we refer to this as a "mobile Chernobyl," this nuclear waste is rolling through your community. My colleague will address that in more detail. Fifty-one million Americans live within 1 mile of one of the rail or highway transportation routes that would be involved in the transportation of these 85,000 metric tons.

I may say that my friend from a previous life—the distinguished occupant of the chair—his State knows well the circumstance because his predecessors, in the aftermath of Three Mile Island, were very much involved in a debate because much of that waste would have gone through the St. Louis metropolitan area.

I just say that the transportation route which I know my friend fully understands contemplates 6,000 shipments that will move through St. Louis, just to cite one particular State and a large metropolitan area that would be exposed to this risk. Let me just repeat, before yielding to my colleague, that each one of those rail casks, 125 tons, with the radioactive equivalent of 200 Hiroshima-sized bombs—now, admittedly, the truck casks are slightly different; they are 25 tons—so let us say that each one of those shipments roughly would contain the equivalent of 40 Hiroshima-sized bombs in terms of the amount of long-lived nuclear radiation that would be involved.

So when we are talking about preempting all of these laws, this is not just a law school or academic or es-

oteric issue. This is something that has been designed by Democrats and Republicans alike over a quarter of a century and is designed to protect Americans everywhere—everywhere. We are talking about 43 States that would be involved in this transportation route. So I know that many of our colleagues have heard our arguments and are perhaps weary of them.

But let me urge them to look at these preemption provisions. They are anti-environment. They are opposed by every environmental organization in America. We are not just talking about some technical, abstract proposition. We are talking about the full panoply of environmental laws designed to protect all Americans. Very clearly, what the amendment offered by the Senator from Alaska would do, it would do the same, in my view, as the language in the present bill and simply say that, if any of these provisions conflict in any way with the provisions of this act, they simply are to be ignored and set aside.

I reserve the remainder of my time, and yield the floor.

Mr. MURKOWSKI. We have one-half hour remaining. Senator JOHNSTON has indicated that he would like to respond very briefly for 2 minutes, and then I intend to recognize the Senator from North Carolina for approximately 5 minutes.

The PRESIDING OFFICER. The Senator has 24 minutes remaining.

Mr. JOHNSTON. I thank my colleague for yielding.

I want to briefly reply to a statement that was made a little earlier by the Senator from Nevada, quoting me a few years back saying that nuclear powerplants were running out of space. The fact of the matter is, that statement was true.

What has happened since that time is two things. First, there has been a regulatory and technological change in allowing what is called reracking or a greater density of nuclear rods in the swimming pools, using more boron and a change in licensing.

The change in licensing, obviously, was not under the control of the utilities, and they have allowed that. I might say that is now at its maximum. Some would say that the NRC is flirting with the safety question by allowing such density of reracking.

But, in addition to that, Mr. President, some utilities have been forced to buy their own dry cask storage at great expense. The Surry VA nuclear plant has been required to do so, the Calvert Cliffs plant in Maryland has been required to do so, and Northern States Power in Minnesota has been required to do so.

As mentioned earlier, according to the decision just rendered by the D.C. Court of Appeals, that will become, on January 31, 1998, the responsibility of the Federal Government to pay for.



That is really what is at issue here in the interim storage. That is, if we do not build interim storage, then the Federal Government is going to have to pay for the dry cask storage on site for a host of utilities, not just the three which have it now, but for a host of utilities all around the country.

So, ratepayers and taxpayers will be paying twice, first, with the nuclear waste fee, and, second, with the damages which will be assessed to the Federal Government to pay for the dry cask storage. That \$5 billion additional fee for damages to the Federal Government can and should be avoided. That is what we seek to do in this legislation. I thank my colleague.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, if ever we have had a commonsense solution to a complex problem come through the Senate, it is S. 1936. It is a sensible way to deal with the high-level radioactive waste that has been accumulating in 110 commercial nuclear units throughout the country.

Regrettably, Mr. President, this bill has been met with wave after wave of opposition based on emotion and ulterior motives rather than the true scientific facts of what we are dealing with.

It is now time for this Senate to stand up and make workable decisions using the facts, those facts that we know and have been proven, and ignoring the conflicting rhetoric, no matter how loudly it is expressed.

As chairman of the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, I am fully confident S. 1936 is a proper approach that will ensure the storage, disposal, and transportation of spent nuclear fuel and will be accomplished under all necessary safety requirements.

Mr. President, it has been brought up that safety is not really the issue here. Opponents wish to use safety as a stalking horse, because by keeping spent fuel in a state of uncertainty, they can argue that no more nuclear plants should be built and current plants should be closed.

The strategy is very simple: Confuse the debate when you do not have a legitimate argument. This is really not about disposal of spent fuel. What we are really talking about here is the future of nuclear energy as a generator of power in this Nation.

The Federal Government has a legal responsibility to take the utilities' spent fuel. This is a legal responsibility. Last week, the U.S. Court of Appeals for the District of Columbia Circuit ruled the Department of Energy must begin accepting this waste by January 1, 1998, an obvious ruling considering the clear requirements of the Nuclear Waste Policy Act of 1982. It seems that just about everybody understands this except the Department of Energy.

Taxpayers are not paying for spent fuel disposal. Fulfilling their part of the bargain, electric utility customers have contributed \$12 billion into the nuclear waste fund, \$344 million from North Carolina alone. Now, it is time for the Federal Government to live up to its part of the bargain.

Utilities do not have enough onsite spent fuel storage space to permit electrical production to continue for the entire life of their plants, which is 40 years, and possibly many, many more. The Federal Government has to fulfill its responsibility and start taking the spent fuel.

If we continue to accept delays, inexcusable delays that have plagued this program, the same utility customers will be forced to pay twice and finance the expansion or new construction at existing plants to store spent fuel. Those who advocate delaying centralized storage believe it is better, instead, to store spent fuel at 110 nuclear units around the country than in one area. If ever there was a false idea as to the safety of storing it, it is to have it in 110 different locations.

Mr. President, let me address the concern that has been raised about the transportation of nuclear fuel. The Federal Government currently transports spent fuel from foreign research reactors in the name of reducing the risk of proliferation. We do it very well. The Navy moves spent fuel for temporary storage in Idaho, and utilities transport fuel between stations. Transporting and storing fuel is one of the few things we do very well.

There is absolutely no reason for any further delay, and there are many compelling reasons to move forward. We must pass S. 1936 to demonstrate fiscal responsibility and to fulfill the promises made by the U.S. Government on which, in good faith, the Nation's electrical utility customers have relied.

Once again, let me repeat, this is not about the waste. It is not about the disposal of nuclear waste. It is about the future of nuclear energy in this country. That is what the opposition is fighting.

The PRESIDING OFFICER. The Senator from Idaho controls 15 minutes and 45 seconds, and the other side has 15 minutes.

Mr. REID. Mr. President, if anyone has any question about where the money is on this issue, where the big lobbyists stand, all we need to do is walk out this set of doors to my right prior to the next vote being called and you will find a sea of lobbyists. This is one of the heaviest lobbying jobs we have ever seen.

There are always promises about this bill, through the various incarnations of the legislation, that it is going to get better. Mr. President, 1271 was introduced. They said it was not quite good enough and tried to make it better. Thereafter, 1936 was introduced

and they said it was a better bill. Now we have a number of substitutes that allegedly will make it better. None of them make it better.

I have been a member of the Environment and Public Works Committee my entire time in the Senate. I love working on that committee. I have served as chairman of the subcommittee that dealt with chemicals and pesticides. We held significant hearings on a drug called Alar, put on apples, grapes, cherries, to prolong their lifetime. It was poisonous. It made people sick, we believed, and is no longer used. We had hearings on lawn chemicals, fungicides.

Mr. President, I am, almost for lack of a better word, offended by someone saying that this amendment will ease the environmental laws. The environmental laws are preempted. They take away all the Federal laws, laws we have worked on. I cannot imagine, for example, the chairman of the full committee thinking that legislation like this is good, legislation that I know he has fought for on a bipartisan basis, including the Clean Water Act, Clean Air Act, Safe Drinking Water Act, Superfund—these laws are all preempted by S. 1936.

My colleague, the Senator from Nevada, did a good job of explaining why this does not answer the problems. It is as bad with this amendment as without the amendment.

We have talked about this legislation being unnecessary, and it is unnecessary. The Nuclear Waste Technical Review Board is not biased toward either side. A group of 12 scientists, eminent scientists, said that transportation of nuclear waste at this time is unnecessary and wrong. Their conclusions were driven by careful and objective examinations of all the issues. They concluded that centralization of spent nuclear fuel, high-level nuclear waste, makes no technical sense, no safety sense, or financial sense.

They found that there is no need for off-site interim storage. They also decided that transportation under this bill is extremely risky. Why do they say that? They say it because it doesn't permit what is absolutely necessary—that is, planning and preparation to make sure that the public health and safety is protected during this massive undertaking.

Mr. President, we are not talking only about the people of Nevada, we are talking about the residents of 43 States. Nobody ever responds to the transportation issue. People are concerned in this Chamber about garbage being hauled across State lines. I don't know how many sponsors there are on the legislation, but I am one of those that think there should be some rules about transporting garbage. Well, this is real garbage. This is real garbage. This is worse than any plastics, or paper, or hazardous waste that you might throw in the garbage. This is real garbage.

In the past, we have had roughly 100 shipments per year of nuclear waste, but they have gone short distances, and most of these were between various places in the eastern part of the United States in reprocessing facilities.

Mr. President, this legislation is a concern to people all over the country. I received in my office a letter from someone in St. Louis, MO. I did not ask for the letter. I got it in the mail. A resident of St. Louis, MO, sent to me in the mail a newspaper from St. Louis. It is dated the middle of June. This newspaper is the *Riverfront Times*. One of the lead stories in this publication is "Gateway to the Waste, Not to the West."

This article says a number of things. One of the things it says is this:

No matter how slim the odds of an accident, the potential consequences of such a move are cataclysmic. Under the plan, tons of radioactive materials would likely pass through the St. Louis area by either truck or rail a few times a week for the next 30 years.

We guess about 6,000 truck and train loads would pass through this site.

The article goes on to say:

Each cask would contain the radiological equivalent of 200 Hiroshima bombs. Altogether, the nuclear dunnage would be enough to kill everybody on earth.

That is why people all over the country are concerned about this nuclear poison. "Safety last" is the hallmark of this legislation. This is not a Nevada issue; it is a national issue. Why? It is a national issue because we have train wrecks that have occurred all over the United States.

Look at these pictures. Here is one in Ledger, MT. If you want to talk about a wreck, this is a real wreck. This is a mutilated train outside Ledger, MT. We also had one thousands of miles away, a recent train wreck that occurred in Corona, CA. This closed down I-15 for about 4 days, off and on, which is the main road between Los Angeles, CA, and Las Vegas, NV. Fire burned for a long period of time.

Also, Mr. President, we had a train wreck that occurred in Alabama a little over a year ago. Some of the people watching this will remember. A barge, in effect, nicked this train trestle, and the next time the train went through, it did not go all the way through. It dumped people in the river, killed people.

People are concerned about transportation, and they should be concerned about transportation, because we have been told by those who know that we should not be transporting nuclear waste. There is no need to do it. The Nuclear Technical Review Board said there is no reason to do it. They are 12 nonpartisan scientists who are trying to do the best thing for the country.

Mr. President, this spent nuclear fuel—we talk about Nevada, but it originates somewhere. We have here a chart that we will talk about later. It

shows the funnel effect of transportation. Thousands, tens of thousands of loads of spent nuclear fuel will be shipped and eventually wind up in a tiny spot in Nevada. But in the process of getting there, these thousands of shipments will go into 43 different States.

Mr. President, these shipments start somewhere. They don't start in Nevada. We don't have nuclear fuel. This is a risk to all States of the United States, not just Nevada. The industry and the sponsors of this bill would like you to believe that transportation is risk free. Well, it isn't. There have been truck and train accidents involving all kinds of things, including nuclear waste. We have been fortunate that there has not been a great dispersion of this nuclear poison. There will be more accidents because there will be tens of thousands of more loads of this.

The industry will tell you that the probability of an accident is not great. Well, probabilities have an inevitable result, and if you push them long enough, the adverse will occur. The day before Chernobyl, the probability of such an accident was extremely low. The accident happened and the consequences were enormous. Now, the probability of another one is much more significant than it was. The same potential exists here.

Mr. President, under this legislation, as the Nuclear Technical Review Board said, we have not made the necessary investments to assure capable responses to accidents. I talked about a few of these train wrecks. We know that if they are moved, they are subject to terrible violation. We know that the casks have been developed to be protective of fire. Yes, fire for 30 minutes.

We know that recently—in fact, last year—we had a train that burned for 4 days. What will a cask do that is safe for 30 minutes of exposure to fire at temperatures of 1475 degrees? Well, it is pretty tough to understand that when we know that diesel fuel burns at an average temperature of 1800 degrees.

Most of the trucks and trains use diesel fuel. Diesel fuel has had occurrences where the heat was 3200 degrees Fahrenheit. So why only 30 minutes? Why 1475 degrees? It simply will not protect us, Mr. President. They also say, well, you can get in a wreck—they have a little film in the industry, which they will show you. You will see this truck firing down and the cask shoots off of it. Well, the casks are safe if the accident occurs if you are only going 30 miles an hour. If you are going faster, you have big problems. The cask will break, and you are in trouble.

I don't know how many would think that this train accident here occurred when the train was going 30 miles an hour. The damage to this vehicle had to have occurred at more than 30 miles an hour. We all know—because we have

watched trains go by—that trains do go 30 miles an hour once in a while, but not very often. So having protection at 30 miles an hour simply doesn't do the trick.

We have residents, Mr. President, along this route—over 50 million of them—within a mile of where this poison is going to be carried. The term "mobile Chernobyl" has been coined for this legislation, and rightfully so. A trainload of waste may not contain the potential that Chernobyl provided—with death and destruction in its wake, and people are still dying from that—but the risk is still there.

People know the risk of this poison. This is something that we have talked about early on, about people waiting after one of these accidents to find out what dreaded disease they are going to get. The odds are that they will get something. We have had that experience in Nevada. We know that the above-ground nuclear tests made a lot of people sick, Mr. President. Most of the downwinders were in east-central Nevada and southern Utah. They got real sick. So transportation is something that has not been answered, it has not been responded to, and it should, because transportation of nuclear waste is something that we simply do not know how to do yet.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho, [Mr. CRAIG] is recognized. The Senator from Idaho has 15 minutes 16 seconds.

Mr. CRAIG. What remains on the other side?

The PRESIDING OFFICER. The Senator from Nevada has 2 minutes 11 seconds remaining.

Mr. CRAIG. Mr. President, will you signal me when I have spoken for 10 minutes?

Mr. President, we have heard a series of statements by my colleague from Nevada that I think the least you could say about is that they were subtly inflammatory. The worst you can say about them is that they are shocking; alarming. The only problem is, if they were true, they might be that. But they are not true. Science argues it, the law argues it, and the facts argue it. There is nothing worse than a picture of a train wreck which my colleague from Nevada has put forth; very dramatic.

If there had been a cask of spent nuclear fuel in the middle of that train wreck, it would still be there and it would be whole and it would be unbreached. That is the evidence. While my colleague from Nevada would argue that these tests are at 30 miles an hour, what it shows is that, in speeds in excess of 150 miles an hour, there might be a potential of breach. My colleague from Nevada is right. You rarely see a train that moves less than 30, although I have never seen one moving at 150.



Mr. REID. Mr. President, will the Senator yield for a question?

Mr. CRAIG. I am happy to yield for a question; a question, not a statement, or I will take my time back. Thank you.

Mr. REID. Will the Senator inform me and the rest of the Senate where the 150 miles an hour information comes from?

Mr. CRAIG. The 150 miles an hour we talk about in relation to the science that was developed to an "unyielding surface." I believe that is the term that is used in the test. That was the result of the calculation which was a product of Sandia National Laboratory, so, I guess I could say, from the best engineers in the country who know how to look at the science and the engineering involved and come up with those calculations.

The most I can say—and I think my colleagues deserve to hear this—is that the language that has been offered and the statements that have been offered this afternoon by my colleague from Nevada as it relates to transportation are simply misleading.

By the way, when you talk of Chernobyl or you talk of Hiroshima and you talk of explosions, casks do not explode, period. There is no one in the scientific field today who would make that argument. If they were breached, they would release radioactivity, but they do not explode, and it is unfair to in any way paint the verbal picture that that kind of risk would be involved.

What the paper from Missouri did not say was that waste now traffics through St. Louis, MO, and it has for a good number of years in its route across the country to the State of Idaho, or to other States where the waste ultimately finds a temporary storage destination.

So for this to be something new in the city of St. Louis is not true. What is important to say about it is that in all the years that it has been trafficked by our Federal Government, there have been no accidents that resulted in any radioactive spill. That is what is important to understand here. I think that is the issue that is so critical as we debate this.

The amendment we have before us is very clear. It says that DOE must comply with all Federal, State, and local laws unless they are inconsistent, or duplicative with the requirements of S. 1936.

My colleagues from Nevada could list all of the Federal laws in the country; every one of them. You can just pick and pull. The point is that, if they are duplicative, then we have already met the test. Why ask somebody to repeat and repeat again only for the exercise, the futility, if you have already made the determination? Would we list all of the defense laws in the country? Pick any law you want. That is not the issue.

The issue is the question of compliance being responsible, being environmentally safe, and humanly safe. I must say that, based on the record that we have already demonstrated in this country by the transporting of the high-level waste of the Defense Department, we have a spotless record.

So it is impossible to argue unless you really wish to only characterize this for the purposes of a motion.

Mr. BRYAN. Will the Senator yield?

Mr. CRAIG. I have no more time to yield. Thank you.

In this issue, emotion sometimes works and scare sometimes works, and I understand that. I have no concern about that. The citizens of my State are very frustrated, as I know the citizens of the State of Nevada are. But what the citizens of Idaho have to admit is that in the years that nuclear waste has been transported to Idaho or through Idaho there has never been a spill. It has been transported safely. Idaho has been concerned about it and has repeatedly checked on it, and as a result of all of that, it has been done in a very safe way.

The Hazardous Materials Transportation Act that S. 1936 complies to, the responsibility that States and authorities have under that act and that the local communities have under that act to assure the safest of transportation, is exactly what we are achieving here. It is my intent, and it is the intent of the Senator from Alaska and the Senator from Louisiana, to assure this Senate that within the capacity of the law and in the capacity of science and engineering today, this is safe. History proves it to be safe. There is no way to argue an example where it has failed or has been unsafe.

At this time, I would like to yield 1 minute to my colleague from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. I thank my colleague for yielding, Mr. President.

I simply wanted to quote from the Nuclear Waste Technical Review Board of March 1996 on the question of transportation risk. The Technical Review Board has been quoted by both sides here today, but this bears directly on the question. It says:

The Nation has more than three decades of experience transporting both civilian and DOE-owned spent fuel. In 1997, 471 shipments were made, 444 of which were by truck. In the 1980's, 100 to 200 such shipments were typically made each year. Numerous analyses have been performed in recent years concerning the transportation risks associated with shipping spent fuel. The result of these analyses all show very low levels of risk under both normal and accident conditions. The safety record has been very good and corroborates the low risks estimated analytically. In fact, during the decades that spent fuel has been shipped, no accident has caused a radioactive release.

Again, from the Nuclear Waste Technical Review Board of March 1996.

Mr. MURKOWSKI. How much time is remaining?

The PRESIDING OFFICER. The Senator from Alaska has 6 minutes, and the other side has 1 minute left.

Mr. MURKOWSKI. I will make a relatively short statement.

Mr. President, again I would like to refer specifically to what this amendment does and what it does not do.

The amendment simply states that if there are provisions of law that are inconsistent with specific terms of this bill, then this bill is applicable. This bill will govern.

Now, the Senators from Nevada would ask that the Department of Energy attempt to comply with inconsistent laws.

I can only assume that they ask this because they know it is impossible to do. That is a catch-22. That is simply a recipe for delay, a recipe for additional expense, a recipe for additional litigation and full employment for a lot of lawyers. Instead, we offer a responsible provision which clarifies that while the Department of Energy will comply with this act, if any Federal, State, or local law is not in conflict with this act, those laws will be complied with.

I reiterate—this is a unique, one-of-a-kind facility. That is why we are here today. We are designing laws to fit this facility. That is why we are debating this legislation. It is not designed to do anything more than address this facility. Other laws are designed for a broad breadth of activities. This is unique. It contains a carefully crafted regulatory program, as I have said, governing this facility only. The position of the Senators from Nevada, I think, results in confusion and attempts to thwart the will of Congress as expressed in this very unique piece of legislation designed for one thing.

Let me just mention the transportation aspect because I have had an opportunity to observe transportation of high-level nuclear waste in Great Britain, in France, and Sweden. To suggest that American technology cannot safely develop a system and casks necessary to transport this waste is simply unrealistic. It is moving by rail in France. One can go into a nuclear plant and see cars on the sidings that were designed to carry the casks. It is moved in Scandinavia by special ships that have been built that traverse the shores of Sweden unescorted. They are in casks. They are specially crewed from the standpoint of the training, but it is not Government employees, it is a shipping line, and they have a proven record of safety.

We have seen this high-level nuclear waste moved in Europe by highway in casks with appropriate measures. If Members will recall, there was a thought given a few years ago to the utilization of a Boeing 747-400 to move high-level waste from the Orient to Europe, primarily because the Japanese

were interested in bringing their waste back to France for reprocessing. So you would be basically moving waste that contains plutonium. The question quite legitimately came up, can you design a cask to withstand a free fall at 30,000 feet? And the answer was, yes, it can be done. It will cost a good deal of money.

What we are talking about here is a realization that we have moved this material for an extended period of time throughout Europe. We have moved it in the United States to a lesser degree. But if we adopt this legislation and if Yucca is the interim site for a repository, to suggest that we cannot move it safely defies realism, defies the experience that other countries have had, and I think it sells American technology short.

I see no other Senator at this time who desires to speak, and I reserve the remainder of my time pending the disposition of the pending amendment.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Nevada [Mr. BRYAN] is recognized.

Mr. BRYAN. I thank the Senator.

Let me respond briefly. The Senator from Idaho was unable to respond to my question because of time limitations, but he was going on at some length as to why the Senators from Nevada would insist that there, in effect, be a duplicative experience when the law already covered it.

A point I want to make very emphatically is the Senator from Idaho is quoting from only a part of the preemption language. The preemption language, in effect, says that if the requirements of any Federal, State, or local law are inconsistent with—inconsistent with—or duplicative. So the point I made, I think, is a telling one and one that is irrefutable, in my opinion, namely that all of these environmental laws that we talked about, if there is a conflict, do not apply.

I must say that in terms of public policy, putting aside one's view for the moment of how you feel about nuclear waste and any urgency that may or may not be present, what a disastrous public policy it is to wipe out the environmental laws, and that is why every environmental organization has opposed this language and that is why the Environmental Protection Agency has strongly resisted it.

Let me talk a moment about the casks, and we will talk a lot more about transportation later on in this debate. The senior Senator from Louisiana cites the numbers that have been shipped around the country. I am sure he is absolutely accurate. But we are talking about something of a scale and dimension unprecedented anywhere in the world—85,000 metric tons, 16,000 shipments. We are not talking about 100. We are talking about 16,000 shipments. The Nuclear Regulatory

Commission claims that the cask design will fail in 6 of every 1,000 rail accidents. Built into this, the laws of probability tell us that with the heightened and elevated volume, you are going to have an accident and a failure.

Finally, I would just like to say with respect to the casks, what has driven this entire debate about nuclear waste over the years is how to do it cheaper, how to do it faster. That is where the nuclear utilities are coming from. And so the new casks that are going to be used to store this have not yet been designed and they will be less expensive and subject to less rigorous standards.

The PRESIDING OFFICER. The Senators' time has expired.

The Senator from Alaska has 1 minute and 6 seconds.

Mr. MURKOWSKI. Has all time expired?

The PRESIDING OFFICER. All time of the Senators from Nevada has expired.

Mr. MURKOWSKI. I say to my friend relative to his reference to an unprecedented scale which he suggests will occur, that factually is just not so. As a matter of fact, the French alone have moved 30,000 metric tons of spent fuel—that is spent nuclear fuel. This is the same amount we currently have, or approximately the same amount we have in the United States today.

I remind my colleagues of one other thing. While it is true we do not have support from the environmental movement in this country, the reality is that most of those groups are opposed to the generation of power by nuclear energy. What they do not do is recognize the obligation that since we are nearly 22 percent dependent on nuclear energy, we are going to have to meet the demand with something else. Nuclear power opponents want to terminate the industry, by not allowing the States to have the availability of storage under State licenses. So when one looks at the environmental concern, you have to recognize the environmentalists are not really meeting their obligation, and that is to come up with an alternative.

The PRESIDING OFFICER. The Senator's time has expired.

All time has expired.

Mr. MURKOWSKI. Mr. President, it would be my intention to ask for a voice vote on this amendment unless there is an objection.

The PRESIDING OFFICER. Is there an objection? If not, the question occurs on agreeing to Murkowski amendment No. 5051.

The amendment (No. 5051) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 5048

Mr. MURKOWSKI. Mr. President, I call up amendment numbered 5048 which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 5048.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike subsections (h) through (i) of section 201 and insert in lieu thereof the following—

“(h) BENEFITS AGREEMENT.—

“(1) IN GENERAL.—The Secretary shall offer to enter into an agreement with the City of Caliente and Lincoln County, Nevada concerning the integrated management system.

“(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of the City of Caliente and Lincoln County, Nevada.

“(3) AMENDMENT.—An agreement entered into under this subsection may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with paragraph (4).

“(4) TERMINATION.—The Secretary shall terminate the agreement under this subsection if any major element of the integrated management system may not be completed.

“(5) LIMITATION.—Only 1 agreement may be in effect at any one time.

“(6) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

“(i) CONTENT OF AGREEMENT.—

“(1) SCHEDULE.—In addition to the benefits to which the City of Caliente and Lincoln County is entitled to under this title, the Secretary shall make payments under the benefits agreement in accordance with the following schedule:

#### BENEFITS SCHEDULE [Amounts in millions]

Event	Payment
(A) Annual payments prior to first receipt of spent fuel .....	\$2.5
(B) Annual payments beginning upon first spent fuel receipt .....	5
(C) Payment upon closure of the intermodal transfer facility .....	5

“(2) DEFINITIONS.—For purposes of this section, the term—

“(A) ‘spent fuel’ means high-level radioactive waste or spent nuclear fuel; and

“(B) ‘first spent fuel receipt’ does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

“(3) ANNUAL PAYMENTS.—Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.



"(4) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to 1/2 of such annual payment under paragraph (1)(A) for each full month less than 6 that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) RESTRICTIONS.—The Secretary may not restrict the purposes for which the payments under this section may be used.

"(6) DISPUTE.—In the event of a dispute concerning such agreement, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(7) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under this section shall constitute a commitment by the United States to make payments in accordance with such agreement under section 401(c)(2)."

Mr. MURKOWSKI. Mr. President, this amendment is an effort to clarify the issue of consideration to be provided to Lincoln County, NV. Specifically, it clarifies that assistance money provided to Lincoln County, NV, may be provided to the city of Caliente, NV. Caliente is within Lincoln County and is the actual site of the intermodal transfer facility authorized by the bill. The intermodal transfer facility is where the cask containing spent nuclear fuel would be offloaded from the trains and placed upon the heavy-haul trucks for the final leg of transport to the interim storage facility at the Nevada site. These can be the off highway type, heavy rigs that operate on very, very large tires and make virtually no footprint. That technology is well known. That equipment, off highway, is used in large mineral excavations and various other large commercial earth moving activities that are of an off-highway nature.

Caliente is northeast of the Nevada test site. The reason for it being selected as the intermodal transfer is that point avoids the transportation of casks through the Las Vegas area.

The elected officials of the city of Caliente, in Lincoln County, have taken what I consider to be a very reasonable, very practical approach, a conservative approach to the storage of this nuclear waste in Nevada. I think they recognize the inevitability. In spite of the difficulty with our concerns of our friends from Nevada, this waste has to go somewhere. You just cannot throw it up in the air and expect it to stay there. Nevada is the preferred site, it is a site where we have had over 50 years of nuclear testing of various types, where it has been expressed on this floor we have had test nuclear explosions that have taken place actually below the water table. So clearly, as we look at the alternative, the Nevada test site is the logical site for the interim repository.

So I think what we see here is that Lincoln County, the city of Caliente,

has recognized the inevitability of this and they have simply attempted to ensure that the interests of their citizens are protected, and I think that is an obligation that we have. They have maintained, throughout the process, that disposition, despite a series of legal attacks, some rather harsh, on their right to represent their citizens and their freedom of speech by the State of Nevada.

I ask unanimous consent the text of a petition, signed by 286 citizens of the city of Caliente, Lincoln County, supporting this position be printed in the RECORD.

There being no objection, the text of the petition was ordered to be printed in the RECORD, as follows:

We the undersigned, support recommendations for maximizing benefits and minimizing risks as outlined in the City of Caliente/Lincoln County Nevada Joint Resolution 1-95. As residents of the State of Nevada, the United States Constitution provides that if the Nuclear Waste Policy Act is going to be amended to allow transportation of spent fuel rods through Lincoln County and the City of Caliente, we are entitled to provide input to any such proposals. Such input would request oversight of safety issues and receipt of benefits that may be associated to any transportation and/or storage facilities located within Lincoln County.

Mr. MURKOWSKI. I was going to read, "We the undersigned support recommendations" and the rest of the statement, but it is cut off by the Xerox machine, so we will try to get that and enter it into the RECORD. I appreciate the President's willingness to have that printed in the RECORD.

In conclusion, I certainly commend the citizens of Caliente and Lincoln County as a whole. I urge the pending amendment be adopted. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada [Mr. BRYAN] is recognized.

Mr. BRYAN. Mr. President, I yield myself 2 minutes.

Mr. President, let me respond. It is true some citizens of Caliente embraced this. From the time of the Old Testament, there are some who are prepared to forfeit their birthright for a pottage of lentils. I must say, I believe my friends and neighbors in Caliente, those who have advocated this project, are misled and misadvised.

I simply point out if 286 becomes the standard, I am sure we could get 286 Alaskans or Louisianians or others to embrace this. It is part of the nuclear energy industry's attempt to, in effect, buy it. Caliente is a wonderful community. It has endured tremendous hardship in recent years. When I was Governor they wanted to have an incinerator and import hazardous wastes to be incinerated. These are folks who are absolutely desperate. I vetoed that legislation. The present Governor has done similarly.

I understand and sympathize with the economic plight of my fellow Nevadans who live in Caliente, but I must say they have been used and badly used by the nuclear industry with this promise about putting a little money out. For my senior colleague and I, this is not about money, this is about public health and safety of 1.8 million people, and there can be no compromise on that issue. That represents the broad public view in Nevada.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada [Mr. REID] is recognized.

Mr. REID. Mr. President, the Nuclear Waste Technical Review Board, in March 1996, recognized the problems with transportation. They recognized, as the senior Senator from Louisiana indicated, that there have been small loads of nuclear waste that traveled very short distances. But they go on to say—and that is the whole point, that they are in effect legislated out of business, because they said, "the Board sees no technical or safety reason to move spent fuel to a centralized storage facility."

Caliente of course means hot. It is not because it is hot weather. It is because they have hot water in the ground there. That is how this town got its name. The city of Caliente represents 0.05 percent of the people of the State of Nevada, 0.05 percent. They are desperate. We have 17 counties in Nevada. There is no county that is in more desperate economic condition.

Their mineral abilities are gone. Their agricultural interests are very sparse. A lot of land is owned by the Federal Government. And they have really struggled. Caliente was a railroad town. The railroad, in effect, has moved out on them. It does not stop there anymore. People who used to work for the railroads do not work there anymore. It is in deep, deep economic depression.

Senator BRYAN talked about one thing they wanted. They also wanted to start a cyanide plant there. They will take anything, I am sorry to say, they are so desperate for money.

Caliente represents, I think, a subject we want to talk about here. Caliente is remote. It is about 150 miles from Las Vegas. Nevada is, surprisingly, the most urban State in America. Mr. President, 90 percent of the people, approximately, live in urban areas, the Reno-Las Vegas areas. Only about 10 percent of the people live in rural Nevada, as we remember it. We have a lot of areas in Nevada that are lonely.

We have the loneliest road in America in Nevada. But Nevada is not the only place that has remote areas. Utah, eastern Utah is extremely remote. I have driven through parts of Colorado that are as remote as any place in Nevada ever was, as are parts of Arizona

and New Mexico. The reason I mention that is we need to understand that not only is transportation a problem for the safety of carrying these canisters—and I say to my friend from Idaho, the 150 mile an hour—they may have run a test at 150 miles an hour, I do not know about that. But I do know the canisters have been certified by the Nuclear Regulatory Commission to this point for 30 miles an hour and for burning for 30 minutes. That is fact. So the 150 miles an hour, I do not know where that came from. They may have run some tests. But certification is for burning at 1,475 degrees for 30 minutes and speeds of 30 miles an hour.

We are concerned about unforeseeable accidents. We have pictures of train wrecks, Ledger, MT, Vernon, CA, Alabama. All over the country they have about 600 train wrecks a year. Most of them, thank Heavens, are not bad, but some are disastrous, like the one that burned for 4 days last year, like the one that closed the freeway between Las Vegas and Los Angeles for 4 days. So we have had train wrecks.

I am not talking about what I am going to say in just a few minutes, because of what took place with TWA, and what took place in Atlanta with the bomb.

I talked about this 3 weeks ago prior to these horrible incidents. I want the RECORD to show I spoke earlier about these and other threats before these tragic event at the Olympics and TWA incident off the coast of New York.

No one wants to exploit the pain, the suffering, and the anguish of those people. Those of us who serve in the Congress, especially serve the western part of the United States, we seemingly live on airplanes. So, when these accidents happen, we all look inward.

But I must speak to the threat of terrorism, because the nationwide transport of spent nuclear fuel will provide targets of inconceivable attraction to terrorists, both foreign and, I am sorry to say, domestic; we have people who are terrorists within our own country, as indicated in the Oklahoma City bombing and probably in the Atlanta Olympic bombing.

We have enemies and they are not all outside the boundaries of this country. For whatever reason, though, these enemies detest parts of our country, and the foreign operations detest what our country stands for and its values. Our very freedoms are threatened. They dwell on hitting points of interest to the American public. That is why the White House is such a target. That is why this building is such a target. That is why we have a police force of almost 2,000 men and women who protect the people who work in these buildings and the tourists who come to this Capitol complex. That is why the Capitol Police have animals that sniff out explosives, animals that are around at all times looking at cars that come in and

out, sniffing to find out if there are explosives. We have bomb detection units. We have bomb disassembly units. All over this Capitol complex, there are plainclothes officers protecting the people who come into this building.

There are people who would do anything to cause terror to this country. So, Mr. President, we have to eliminate whatever we can that allows them targets.

There are many clandestine foreign interests. We know that. Some are led by leaders of countries. They want to publicize their existence and promote their goals through outrageous acts of blatant terror and destruction. What better stage could be set for any of these enemies of our country than a trainload or a truckload of the most hazardous substance known to man, clearly and predictably moving through our free and open society?

You cannot move a 125-ton object on a train that is full of nuclear waste without having it marked and without notifying people it is coming through. These shipments, of necessity, must pass through our most populated centers, which provides opportunity for a successful attack for a terrorist to strike terror and public confidence in our form of Government.

Earlier today, I talked about something I received in the mail from St. Louis. It is a newspaper called Gateway to the Waste. It talks about how in St. Louis they are afraid of nuclear shipments there.

Each cask would contain a radiological equivalent of 200 Hiroshima bombs. All together the nuclear tonnage would be enough to kill everybody on Earth. These shipments would not only pass through populated centers but through remote and inaccessible territory. Remember, I say to my colleagues of the Senate, that the accident that occurred in Arizona occurred in a very remote area. A person went out there undetected and simply took some tools and took the track apart. When the train came over, the tracks spread and death and destruction was in its wake.

The opportunity to inflict widespread contamination to engender real health risk to millions of Americans is apparent. And people say, "Oh, no one would do that."

What happened in Japan? Sarin gas was collected and dispersed. They did not do a very good job. They only wound up killing dozens of people and causing respiratory problems and other forms of illness to hundreds and hundreds of people. That was a failure, even though they caused death and destruction to that many people. If they had done it right, it would have killed thousands.

We must prepare for the realities accompanying a massive transportation campaign that would be required to consolidate nuclear waste at a reposi-

tory site. We must deter our enemies through readiness and competent response before we undertake this dangerous program.

One of the things the Nuclear Waste Technical Review Board said is we are not ready for this. The Governors' Association hired some people to conduct a test to see how the State of Nevada—this was not done by the State of Nevada, but the Governors' Association did it to find out how Nevada is prepared—now remember, Nevada has dealt with things nuclear before with aboveground and underground nuclear testing—how we would deal with nuclear waste transportation through Nevada if something went wrong. We are not ready, not even close. If we are not ready, you can imagine how other States are. We must assure our citizens we only have to undertake this dangerous venture once. It is paramount we do it right the first time.

There is a growing danger in this country from both domestic and international terrorism. Exposure of this substance can lead to immediate sickness. It is much worse than sarin gas. Early death, and for less acute exposure, to years of anxiety and uncertainty as the exposed populations wait helplessly for the first onset of thyroid cancer, bone cancer, leukemia, liver and kidney cancer, and on and on.

We know that we must be prepared, and we are not prepared. The comprehensive assessment of its capacity to respond and manage a radiological incident in Nevada did not work out well. That is the way it is all over the country.

Mr. President, why are we concerned about terrorist incidents? We have weapons that are almost unbelievable. Most of us in this Chamber have gone shooting with a shotgun. We know how big a shotgun shell is.

Here we have a shell not even double the size of a shotgun shell, and this is a shaped charge warhead terrorist tool. It is 1½ inches in diameter and 4 inches long and, as described by scientists, it kind of works like a watermelon. When you squeeze the seed of a watermelon it squeezes the liner material and squirts out. This will pierce 5 inches of steel. That is what this chart shows.

Mr. President, if the Presiding Officer wanted to buy a weapon to spread terrorism around the United States, he could do it. It might take you a week, 2 weeks, but if you have money, you can buy from an arms dealer. I have pictured one weapon. We have lots of other weapons we can show, but this one weapon is a Russian version of a portable antitank weapon. This weapon is pretty accurate. At 330 yards, you can hit a target the size of my fingers here. It weighs 15 pounds. That is all it weighs. This weapon is a little more powerful than the one I just showed you, because this will fire 330 yards. It will go through 16 inches of steel.



The typical rail canister of nuclear waste is about 4 inches of steel plus some lead and some water. A piece of cake for this weapon that I just showed you.

But, Mr. President, weapons are all over, easy to pick up and purchase, weapons weighing 16 pounds, 22 pounds, penetrating up to 3 feet of steel.

You might say, no one could afford this. These weapons you can buy for \$5,000, \$10,000. That is all they cost. Buy a few shells with them. These are antiarmor weapons.

The reason, Mr. President, we should be concerned about this is that all nuclear waste is funneled into one small part of our country. It starts out this big with tens of thousands of shipments, but the more it goes, by the time it gets to Colorado, the circle is that big, and all through these parts of the country, Mr. President, you keep narrowing the scope. It is becoming easier and easier the farther west you go, the more remote it becomes, and the more concentrated volume of nuclear waste will be shipped there.

If I were a terrorist organization, this would be a piece of cake. These weapons will fire up to 300 to 400 yards. They are in very remote areas. You can go places in Nevada, Arizona, and Colorado where people do not go for days. Along those railroad tracks, you can be out there, camp, and all you are going to be interrupted by are the trains coming by. That is why they have been unable to catch the person in Arizona because he could have been gone for a day before the tracks separated, or longer.

So what are we going to do? I think what we should do is do what the Nuclear Waste Technical Review Board did and say, let us not subject the world and the country to the spread of this nuclear poison. We have not invested in the transportation planning. And the preparations are absolutely necessary for the safe transportation of this dangerous material through our heartland.

We have not addressed the spectrum of threats to safe transportation and not developed a transportation process that guards against these threats and are not ready to meet the emergencies that could develop because of a nuclear accident or a terrorist act. The Nuclear Waste Technical Review Board recognizes our lack of readiness. That is one of the reasons they argued against the transportation program proposed by this legislation. The lack of readiness, preparedness and careful planning is one of the main reasons I urge my colleagues to vote against this ill-conceived, unnecessary and premature approach to managing nuclear waste for our country.

Mr. President, we are talking about a substance that is the most poisonous substance known to man. We have been told by preeminent scientists, Dr. John

E. Cantlon, Michigan State University; Dr. Clarence R. Allen, California Institute of Technology; John Arendt, of Arendt Associates; Dr. Gary Brewer, University of Michigan; Dr. Jared Cohon, Yale University; Dr. Edward Cording, University of Illinois, and on and on.

These people, 12 in number, are eminent scientists with no political agenda, scientists saying we are not ready to move this stuff. It is safe to leave it where it is. Leave it where it is. So we should leave it where it is.

This legislation is unnecessary. It is being pushed by the nuclear lobby. That is why it is being done, to save the nuclear industry money and pass the expense off to American taxpayers.

They are always in a rush—always in a rush. It took us many years before the permanent repository. We got it where science would control what went on. Lawsuits had to be filed. Legislation had to be passed. But that is not fast enough for them. Now they do not want to wait for science, which will come back and tell us in 1998 how the Yucca site is going to be. They are unwilling to wait for that because they want to save a buck.

They want to save a buck by passing the responsibility off to the Federal Government way ahead of time and, in the process, making this country vulnerable to accident by rail or car, and opening our country to more terrorist acts. The terror we have known in the past pales any time we think about what could happen if a terrorist was able to penetrate one of these nuclear shipments.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank the Chair.

I would like to comment about the remarks made by my good friend from Nevada relative to the concern we all have, the legitimate concern we have over terrorism. He makes the case that, you know, there is a terrorist threat and therefore we ought to leave it where it is.

Let us look at where it is, Mr. President. The chart behind me shows it is in 41 States. There are 81 sites out there. Is it logical to assume that we are better off to leave it there where it is exposed in 41 States at 81 sites or put it in one place—one place—out in the Nevada desert, where we have had over a period of some 50 years extensive nuclear tests, time and time again, an area where it is concentrated and can be supervised and guarded, namely, the one site in Nevada?

It just does not make sense if you are going to argue the merits of terrorism to have it all over the country, as I have indicated on this chart—41 States, 81 sites—or put it in one place where

you can monitor, you can control it, you can guard it. You can take the necessary steps to ensure that the threat from terrorism is at a minimum.

I do not know an awful lot about ballistics, Mr. President, but I know something about a shotgun because I hunt ducks. I cannot comprehend a type of a shotgun that can go 300 yards and pierce through 5 inches of steel. What I do know is what the Department of Energy has supplied us with. They have done eight sabotage studies.

One of those included a 4,000-pound ammonium nitrate bomb that was similar in size, same makeup of what was used in the Oklahoma Federal building. They placed it in a container to see if they could pierce the cask. It was not breached, Mr. President.

Another test—unfortunately, they are not able to disclose this type of technology because it is a black program, but they stated that this device was 30 times larger than an antitank weapon. Although this weapon made a small hole in the container, there was no significant release of radioactivity. Make no mistake about it, if there is a puncture, it is not going to blow up.

The suggestion was made, you are going to have the equivalent of so many times of Hiroshima; if you are going to penetrate that cask, the radioactive material can come out. But it is very, very heavy. As a consequence, its tendency is to remain in the immediate area. But the point is, these casks are designed to withstand, if you will, the exposures associated with an accident, whether it be a railroad, whether it be a ship, or whether it be a highway.

I would like to turn a little bit to attitudes prevailing in Nevada. As I indicated earlier, we have some 268 signatures from Caliente. I have been able to obtain the completed Xerox of the one that I started on earlier, Mr. President, and was cut off. I think it is important to read what these people said, and that has been inserted in the RECORD.

We the undersigned, support recommendations for maximizing benefits and minimizing risks as outlined in the city of Caliente/Lincoln County Nevada joint resolution 1-95. As residents of the State of Nevada, the United States Constitution provides that, if the Nuclear Waste Policy Act is going to be amended to allow transportation of spent fuel rods through Lincoln County and the city of Caliente, we are entitled to provide input to any such proposals. Such input would request oversight of safety issues and receipt of benefits that may be associated to any transportation and/or storage facility located within Lincoln County.

That is the point of this amendment, Mr. President, to provide that assistance.

Mr. President, I ask unanimous consent that a letter from the International Association of Fire Chiefs, dated July 26, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

INTERNATIONAL ASSOCIATION OF  
FIRE CHIEFS,  
Fairfax, VA, July 26, 1996.

Hon. FRANK H. MURKOWSKI,  
Chairman, Energy and Natural Resources Com-  
mittee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: The International Association of Fire Chiefs (IAFC) fully supports S. 1936 and urges its prompt passage.

Nuclear fuel has been accumulating and temporarily stockpiled since 1982 at numerous staging locations throughout the United States. The stockpiling of nuclear waste in so many removed locales renders them most vulnerable to potential sabotage and terrorist attacks. A plan to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative.

S. 1936 offers a plan to remove this spent fuel and coordinate its transport to a single secure interim storage facility. With proper planning, training and preparation, this spent fuel can be transported safely and efficiently over the nation's railways and highways.

We appreciate your leadership on this difficult but important issue.

Very truly yours,

ALAN CALDWELL,  
Director, Government Relations.

Mr. MURKOWSKI. It states:

DEAR CHAIRMAN MURKOWSKI: The International Association of Fire Chiefs (IAFC) fully supports S. 1936 and urges its prompt passage.

Nuclear fuel has been accumulating and temporarily stockpiled since 1982 at numerous staging locations throughout the United States. The stockpiling of nuclear waste in so many removed locales renders them most vulnerable to potential sabotage and terrorist attacks.

That is what I said before. Do you want it over here in the 41 States in over 80 sites? The fire chiefs say, no, put it in one site.

A plan [they further say] to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative. Senate bill 1936 offers a plan to remove this spent fuel, coordinate its transport to a single secure interim storage facility. With proper planning, training and preparation, this spent fuel can be transported safely and efficiently over the Nation's railways and highways.

It is signed by Alan Caldwell, director, government relations, from the International Association of Fire Chiefs.

Here is a petition, Mr. President, to the President of the United States, signed by 600 workers associated with the Nevada test site. I previously entered the specific petition and narrative in the RECORD, but let me read what it says. This is signed by over 600 workers at the Nevada test site.

We who have signed this petition live in the State of Nevada. Many of us work at the Nevada Test Site. Some of us work on the Yucca Mountain project.

The [Nevada Test Site], an area larger than the State of Rhode Island, was chosen

as a nuclear weapons testing site by President Truman. Its dry climate and remote location made it ideal for weapons testing 45 years ago. Those same factors make the NTS ideal for storing high level nuclear waste and spent nuclear fuel. There is now, in southern Nevada, a resident work force that is well trained and experienced in dealing with nuclear materials. We, who are part of that work force, believe the NTS presents a solution for the United States for the temporary and permanent storage of high level nuclear waste and spent nuclear fuel. It is a well secured site, it is remote, it has already been utilized for nuclear purposes, it has an experienced and well-trained work force and we as Nevada workers, want it.

We urge you to work with Congress to make the NTS the solution to this Nation's nuclear waste dilemma.

There you have it, Mr. President.

How much time is remaining?

THE PRESIDING OFFICER. The Senator from Alaska has 17 minutes 8 seconds.

Mr. MURKOWSKI. I read the following letter from the Southern Nevada Building & Construction Trade Council, dated July 23, a letter to Senator CARL LEVIN.

DEAR SENATOR LEVIN: I am writing to thank you for your support of Senate Bill 1936 and I urge you to continue that support.

I am a representative of the many working men and women of Nevada who strongly support the passage of S. 1936.

Although we more often than not support the positions of Senator Harry Reid and Senator Richard Bryan, our views on this particular issue differ significantly from theirs. On behalf of my members I urge you to continue your support of S. 1936, as reflected by your recent vote in favor of cloture. We sincerely thank you for your position.

As way of introduction, I am President of the Southern Nevada Building and Construction Trades Council, Vice President of the Nevada AFL-CIO, and serve as an appointee of Nevada Governor Bob Miller to the Nevada Commission on Nuclear Projects. I have followed the nuclear waste issue in Nevada for many years. My years of experience at the Nevada Test Site goes back to a time when Nevada elected officials actually sought the opportunity to store high-level waste at the Test Site.

The 18,000 craftsmen that I represent, as well as over 100,000 members of the Nevada AFL-CIO, feel strongly that the Yucca Mountain Project is safe and can be good for Nevada. We recognize, perhaps better than most, the importance of health and safety in dealing with high-level waste and nuclear materials. We have dealt with it for many years and as the workers handling this material we have the most to lose if this program is not safely run. Based upon our past experience in Nevada, we have a great deal of confidence that this facility will be safe.

Nevadans are pragmatic people and I believe that, contrary to statements made by some Nevada officials, many if not most Nevadans would not contest the location of this facility in Nevada. Remember that we have tested over 900 nuclear devices in the Nevada desert with little local opposition. Like the nuclear weapons testing program the nuclear waste program is essentially a non-issue among rank and file Nevadans. We find it extremely difficult to imagine that you could possibly find a more willing political climate anywhere else in the United States for this type of facility.

We understand that you may have been asked, by members of the Nevada delegation, to oppose legislative efforts to move the nuclear material storage program forward. An immense amount of scientific study has been conducted at Yucca Mountain and it has conclusively found the location to be a superior one for this type of facility. Some officials from Nevada have made a concerted effort, using every conceivable means, to thwart this scientific and environmental program.

Enclosed you will find petitions signed by many Nevadans who support passage of this legislation. We intend to meet with the White House shortly to express our position and to transmit the petitions. Our message to the President will be: Move this program forward—do not allow partisan politics to stand in the way of a solution to this problem. Any other approach would be both bad politics and bad public policy.

As a fellow American, a fellow Democrat, and as a representative of the working men and women of Nevada, I urge your continued support of S. 1936.

It is signed by Frank Caine, president of the Southern Nevada Building Construction & Trade Council.

Mr. CONRAD. Will the Senator yield?

Mr. MURKOWSKI. I do not attempt to speak, obviously, for the people in Nevada. That is the job of the Senators from Nevada. I do think it represents a significant voice to be heard and to be brought to the floor.

I yield on the Senator's time.

THE PRESIDING OFFICER. The Senator from North Dakota has no time.

Mr. MURKOWSKI. I yield very briefly for a question if it is on my time because we are running short.

Mr. CONRAD. I have been increasingly concerned about the notion of the terrorist threat, and I am very interested in the answer of the Senator from Alaska.

It strikes this Senator, when you are talking about 100 different locations in the shipment of nuclear fuel from around the country to a single spot, that the risk of a terrorist threat increases dramatically; I just ask the Senator from Alaska, in talking to security people—in fact, I talked to Secret Service people about when the President is most vulnerable, and they told me they believe the President or anybody that they are guarding is most vulnerable when they are in transit. In fact, they feel they are most vulnerable when they are getting in or out of the vehicle.

I was thinking how that relates to the circumstances we face here. We saw that with President Reagan and the assassination attempt when he was getting into a vehicle. Rabin was assassinated when he was getting into a limousine, because you know where a person is, you know where they will be, that is when they are most vulnerable.

It strikes me that the same thing may be the case with respect to the transporting of these materials, and I am interested in the reaction of the Senator from Alaska to that.

Mr. MURKOWSKI. If I may respond to the Senator from North Dakota,



that is the very point we are talking about. Terrorism is a threat, but we have this currently in 41 States at 81 sites, and the ability to secure those sites from terrorism in its current form is much more difficult than having it in one central spot, because that is where it will be permanently stored, either until Yucca Mountain has a permanent repository or, during the interim, until the permanent repository is set.

What we are looking at here is one site, one storage capability, one set of experienced personnel to guard against terrorist activity, as opposed to the chart, which I will again leave for the Senator to view, 41 States and 81 sites.

It just simply makes sense. The Senator from North Dakota was not here when I entered into the RECORD a letter from the International Association of Fire Chiefs which simply says:

... so many removed locales renders them most vulnerable to potential sabotage and terrorists attacks. A plan to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative.

So this is the very concern we are talking about. Obviously, you are not going to store in these sites forever. That is a given. You have to take it out of these sites at some point in time. The Federal Government has collected almost \$12 billion from the ratepayers. It has entered into a contractual agreement. We are talking about reneging on the agreement, basically, if we don't go ahead with it, and leaving it where it is for an undetermined period of time until then you decide to move it. It is inevitable that you are going to move it. We are talking about here—once you move it, the threat of terrorist activities associated with it are much reduced because you don't have that number of sites in that exposure in the 41 States.

So the logic, I think, speaks for itself. I think, from the standpoint of terrorism, exposure is less dramatic if you have it at one site where it is easier to secure.

I think my time has about expired.

The PRESIDING OFFICER (Ms. SNOWE). The Senator has 8 minutes remaining.

Mr. CONRAD. Might I ask my colleague to yield me some time so I might pursue this?

Mr. BRYAN. How much time does my friend require?

Mr. CONRAD. A couple of minutes.

Mr. MURKOWSKI. How much time remains on the other side?

The PRESIDING OFFICER. There are 9 minutes 50 seconds remaining.

Mr. BRYAN. I yield 3 minutes to the Senator from North Dakota.

Mr. CONRAD. Madam President, I can understand, with respect to a terrorist threat, that if you had it at one

site, it is easier to guard and secure than at 81 sites. What really raises questions, at least in my mind, is when this material is in transit, because now you are not talking about 81 sites, you are talking about an infinite number of places where you are vulnerable to some kind of terrorist threat. So, to me, it is not a question of 81 sites versus 1 site, it is a question of being in transit from 81 sites to 1 known place. If I were trying to put myself in the position of a terrorist, and I knew that all this material has to go through a series of locations to arrive at one destination, that makes it very vulnerable to a terrorist attack. So the question I really have is, aren't you most vulnerable when this material is in transit?

Mr. MURKOWSKI. I respond by asking my friend from North Dakota, is it not inevitable that at some point in time, in order to meet the contractual commitment, you are going to have to move this anyway?

Mr. CONRAD. Yes.

Mr. MURKOWSKI. So it is still going to be vulnerable to terrorist attacks.

Mr. CONRAD. I think, without question, my own view is that, obviously, this material is going to have to be moved at some point. But, on the other hand, perhaps the technology will be developed that would allow you to deal with this material at those locations and not have to be transporting it to a single site in one place in the country, where you are vulnerable. It would seem that it would be easy for a terrorist to look at the map and say, "Here are the sites it is coming from, and here is the one place on the map it is going to." You could draw a series of sequential rings and, with a high degree of confidence, know this material is going to pass through there, and you are, in that way, highly vulnerable to a terrorist threat.

Mr. MURKOWSKI. Madam President, the Senator from—

Mr. BRYAN. On whose time is the Senator from Alaska responding?

Mr. MURKOWSKI. On my own time. First of all, the Senator from North Dakota is suggesting that we dispose of it on-site somehow through advanced technology. That suggests reprocessing, which we don't allow. So that is basically a nonalternative. Some people suggest that is somewhat unfortunate because, in France, they do reprocess, reinject. They don't bury the plutonium like we do. They put it back in the reactors and burn it.

Now, the inevitability of the question of whether or not you leave it where it is and subject yourself to the potential terrorist exposure in 41 States and 81 sites—that suggests that you are not going to have the same degree of security and experience in all these sites because you cannot possibly cover that many sites. So you put it at the one site in Nevada where you can provide the security. So the terrorism exposure

in Nevada is, for all practical purposes, eliminated. Your exposure is shipping them, granted. That is why the casks are designed as they are designed.

As I said in an earlier statement, the Army has tested a device 30 times larger than an antitank weapon, and although it made a small hole in the cask, there was no release of radioactivity. So you can't eliminate the entire risk, but you can eliminate, to a large degree, the technical design—this is a heavy thing; the terrorists are not going to run off with it. They have to do something very significant. Obviously, there is going to be security associated with the movement. I think we are talking about 10,000 casks. I defer to the Senator from Louisiana who, I think, wants to address the Senate.

Mr. JOHNSTON. Madam President, I appreciate my colleague yielding to me. They have done studies on these shippings, and what they have found is that upward of 10,000 to 20,000 shipments have already been made. They say numerous analyses have been performed in recent years concerning transportation risks associated with shipping spent fuel. The results of these analyses all show very little risk under both normal and accident conditions. The safety record has been very good in corroboration of the low-risk estimate analytically. In fact, during the decades that spent fuel has been shipped, no accident has caused a radioactive release. What they have done is they have made models both on the computer and they have done actual tests. For example, there was a chart up there that showed that they hit a cask at 80 miles an hour with a train, and they dropped them from buildings and all that. In none of these was there a risk.

I might add that we ship nuclear warheads all the time. We don't ship those actually in these kind of casks. Frankly, I don't know how they ship them, but they are not sealed off as these casks are. They have gone to the extent—in one instance, they said a shipping cask has been subjected to attack by explosives to evaluate the cask and spent fuel response to a device 30 times larger than an antitank weapon. They attacked one of these with a weapon 30 times larger than an antitank weapon. The device would carve approximately a 3-inch diameter hole through the cask wall that contained spent fuel, and it was estimated to cause a release of about one-third of an ounce. "No transportation"—this is a quote—"can be identified that would impose anywhere near the energy per unit volume caused by this explosive attack."

So even if you get a weapon 30 times larger than an antitank weapon and attack the cask with it, all it does is have a release of about one-third of an ounce. So I submit to my colleague that, I guess you can postulate some

accident where some meteorite might come down and happen to hit a railroad train in just the right way and somehow that could harm somebody. But they have postulated about every conceivable risk, including a weapon 30 times larger than an antitank weapon, and they postulate only one-third of an ounce of release—that, plus the fact that there has never been a release of radioactivity in 4 decades of these transportations, from 10,000 to 20,000 shipments in this country alone, not to mention those around the world.

I would say there are things to worry about. But I honestly do not believe that transportation is one of them.

Mr. CONRAD. Let me ask my colleague.

Mr. REID. Madam President, I would be happy to yield to my friend, but I want to respond directly to the statements made by the Senator from Louisiana.

This is pure doubletalk. The fact of the matter is that the weapon that they used to test was a device designed to destroy reinforced concrete pillars and piers. The weapon was not designed to destroy a structure like a nuclear waste canister. In fact, the weapon used for testing performed its military mission so poorly that our military forces abandoned this device for a better design. The weapon used, even though it was not much good, did perforate the canister. The hole is small, and there was leakage, but it was not a great deal of leakage.

But everyone looking at this knows that the weapon that has been used—any of the weapons that I have on this chart are manufactured all over the world—would perforate this thing like that—16 inches of steel, 36 inches of steel, 28 inches of steel.

This is, in all due respect to the Senator from Louisiana, who is a tremendous advocate for the nuclear industry, part of their doubletalk. They have not been willing to test these canisters the way they should be tested, and the Nuclear Regulatory Commission has said to this point that all they have to do is to be able to withstand a maximum of 30 miles an hour and a fire for 30 minutes. That is totally inadequate not only for accidents, but for terrorist activities.

I yield now to my friend from North Dakota.

Mr. CONRAD. Madam President, I thank my friend from Nevada.

I just go back to this question. It does strike me, given the rise of terrorist activity not only in this country but around the world, that when you put in motion from 80 different sites around the country, from 41 States, thousands of these casks headed for one location, that if you were a terrorist organization—it would take very little calculation to figure out where this is most vulnerable—you would have the potential here for a terrorist

organization when this stuff is most vulnerable, when it is in motion, when it is in transit, to attack either a train or a truck and get possession of this material and thereby be able to threaten dozens of cities in America.

I must say, when I have talked to security people—again, I talked to a person who was in the Secret Service—with respect to when they think something that they are guarding is most vulnerable, they said without question it is when it is in transit, when it is on the move. That is when it is the most vulnerable.

Mr. JOHNSTON. Madam President, will the Senator yield?

Mr. CONRAD. Yes.

Mr. JOHNSTON. Is the Senator suggesting that we leave it permanently at the 70-plus sites around the country?

Mr. CONRAD. No. This Senator is suggesting that maybe we ought to revisit the question of reprocessing in this country. That is an alternative. Maybe we ought to consider various other technological alternatives that may present themselves. I am just raising the question. With what is going on in terms of terrorist threats abroad and in this country, are we doing a wise thing by setting up a circumstance in which this material starts to move from 80 sites around the country to one defined location in America? That troubles me.

I really am struggling myself with the question of how to respond to that. I must say it has made me rethink the whole question of reprocessing. I wonder sometimes if we have made wise choices in this country.

Mr. JOHNSTON. If I may answer that, because the Senator is a very thoughtful Senator and it is a fair question.

First of all, let me say, on the issue of reprocessing, you would need a central facility for reprocessing anyway. So that does not solve the transportation problem.

Second, I would say to my friend that the studies that have been done—and you have four decades of experience with transportation of this fuel with never a radioactive release, plus you have a lot of postulated accidents. For example, they have taken actual accidents and made the studies of what that would have done to nuclear waste had it been involved. In one, in April 1982, there was a three-vehicle collision involving a gasoline truck trailer, a bus, and an automobile which occurred in a tunnel in which 88,000 gallons of gasoline caught fire and burned for 2 hours and 42 minutes. For 40 minutes the fire was at 1,900 degrees Fahrenheit. If a nuclear waste canister had been involved in this accident, it would have suffered no significant impact damage, and the fire would not have breached the canister. There would have been no radiological hazard. The spent fuel in the canister would not

have reached temperatures high enough to cause fuel cladding to fail.

We go on here to other postulated accidents. A train containing both vinyl chloride and petroleum—the tanker cars derailed and caught fire. The fire burned for several days and moved over a large area. There were two explosions. Had nuclear waste canisters been on the train, they would not have sustained any damage from the explosion. They might have been exposed to the petroleum fire for a period ranging from 82 hours to 4 days. Even so, the canisters themselves would not have been breached.

Mr. CONRAD. Will the Senator yield?

Mr. BRYAN. Madam President, we have just a little time left.

Mr. CONRAD. I would like to conclude with this question.

My understanding is that those are accident scenarios. What concerns this Senator is a terrorist scenario when terrorists launch an attack on these materials when they are in transit and most vulnerable. I must say that I think it is something that we have to be concerned about.

Mr. JOHNSTON. The point is this, though: They have tested it with weapons 30 times bigger than antitank weapons with direct hits. That caused a breach. Only a third of an ounce comes out. There are many, many much more lucrative targets, by orders of magnitude more lucrative for terrorists, everything from chemicals that travel throughout the country every day, from LP gas to others which are many, many times easier to breach and would cause a much bigger problem. The essential thing is that nuclear waste is not a volatile matter.

Mr. BRYAN. Madam President, I say to my colleague that this is on my time.

How much time is left?

The PRESIDING OFFICER. Approximately 2 minutes.

Mr. BRYAN. If the Senator uses his own time, I have no problem with it. But I am not prepared to yield any more time.

Mr. JOHNSTON. I would be finished in just a moment.

Mr. MURKOWSKI. Madam President, I ask unanimous consent that the other side have 2 more minutes total and that we may have 1 minute on this side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JOHNSTON. Madam President, nuclear waste traveling the country is, first of all, solid in form. It is sealed in a cask that, as I say, if you get a direct hit by something 30 times more powerful than an antitank weapon, what do you get? You get a third of an ounce of release. What does that do? It does not explode. It is not gaseous. It does not get down to the water supply. It is, as these matters go, relatively benign.



And, even so, you cannot imagine a situation other than a terrorist attack where there is any release at all.

So I submit that there are a lot of things to worry about, but transportation is not one of them.

Mr. MURKOWSKI. If I may, Madam President, take the last 30 seconds in response to the Senator from North Dakota, we have seen in Europe the movement of over 30,000 tons of high-level nuclear waste in countries that are exposed to terrorism at a far greater theoretical sense than the United States. There has never been one instance of a terrorist activity associated with movement by rail, highway, or ship. Terrorists are not going to necessarily look at terrorizing a shipment when they can move into nerve gas and weapons disposals that are moving across this country—all types of material that are associated with weapons—where they can create an incident of tremendous annihilation on a population.

This is very difficult because it is secure, in a cask; it is guarded; and it has been proven it has moved through other countries, particularly Great Britain, France, in Scandinavia, and to some extent starting in Japan. So there is a risk associated with everything. But we have not had terrorist activity in this area because there are other more suitable sites.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, I appreciate the statement of the senior Senator from North Dakota, his expression of concern about the vulnerability that we have to terrorism. It is a fact of life in 20th century America. All of us apprehend, lament, and regret it, but it is a very real fact. I must say, just as the bad guys in the Old West always knew where the stagecoach was most vulnerable—it was not when it was at the office; it was not when it was being unloaded at the bank—it was out on the road, so too when we are talking about thousands and thousands of miles of rail and highway shipments. There are so many places that a terrorist could find a point of vulnerability. The concerns that my colleague from North Dakota mentioned I believe are very real and very genuine, so I thank him very much for his explanation.

Let me just make one other point here. It is something we constantly hear about, that this bill will result automatically in not 109 sites but 1 site. Mr. President, that is just absolutely false, absolutely false. Each of the nuclear reactors that are currently generating power have spent fuel rods contained in the pools. They remain there at least for 5 years. If we assume that every reactor in the country is

going to close, which is certainly not the predicate of the Nuclear Regulatory Commission, under the current existing licenses some nuclear utilities would remain open at least until the year 2033. So all this bill would do in terms of concentrating storage would add not 109 but you would have 110 sites, namely the new facility that they have proposed to construct at the Nevada test site for interim storage.

So this ad, I know, the nuclear utilities love. They spend millions of dollars in advertisements in magazines and publications that give one the impression, wow, if we just opened up this facility at the Nevada test site there will not be nuclear waste stored any place in the country.

That is wrong.

May I inquire as to how much more time the Senator from Nevada has?

The PRESIDING OFFICER (Mr. HELMS). All time has expired.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask for a voice vote on the amendment.

The PRESIDING OFFICER. The question occurs on agreeing to amendment No. 5048 offered by the Senator from Alaska.

The amendment (No. 5048) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to the bill?

Mr. REID. Mr. President, if I could just confer for a few minutes with my friend from Alaska and inform the rest of the Senate, what we are trying to work out now—and we do not know we can do it, but we are trying to—on this side we have three amendments. We want to vote on one of those amendments, a recorded vote. We would like that, if it is OK—we have a Democratic conference that is starting at 4. We would like to do that at 3:30 and then have final passage at approximately 5 o'clock and dispose of the other amendments in the interim by voice vote.

I have spoken to the Senator from Alaska. I know he has to confer with others to see if that can be worked out. Otherwise, we can do something else. In the meantime, we will go ahead and offer an amendment.

Mr. MURKOWSKI. Mr. President, I conferred with the Senator from Nevada and my colleague, Senator JOHNSTON, and I want to check with our leadership.

It is my understanding the next amendment will be offered by the Senators from Nevada, and they would want a rollcall vote on that amendment?

Mr. REID. No, the next amendment, we will offer and talk about it a little bit and have a voice vote.

Mr. MURKOWSKI. Voice vote. The one after that you would like—

Mr. REID. The one after that we would—

Mr. MURKOWSKI. Might I ask whether the Senators intend to use their full 30 minutes?

Mr. REID. We would be willing to work out something after this so the time is equally balanced.

Mr. MURKOWSKI. I will entertain then the amendment that is about to be offered that would require simply a voice vote, and that will give me an opportunity to check with the leadership on this side and then respond to the Senators concerning their proposal.

I thank the Chair and yield to my colleague from Nevada.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BRYAN. I thank the Chair.

AMENDMENT NO. 5075

(Purpose: To specify contractual obligations between DOE and waste generators)

Mr. BRYAN. I send an amendment numbered 5075 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. MURKOWSKI. If I may interrupt, I assume there is acknowledgement that the Senators contemplate a voice vote prevailing on our side?

Mr. BRYAN. That is correct. We are not requesting that a rollcall vote occur with respect to amendment 5075.

Mr. MURKOWSKI. The voice vote that the Senators are proposing, they are assuming we would prevail?

Mr. REID. I would say to my friend from Alaska, he has not heard the argument yet. He may be persuaded.

Mr. MURKOWSKI. I will take my chances.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes an amendment numbered 5075.

Mr. BRYAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

**"SEC. . CONTRACT DELAYS.**

**"(a) UNAVOIDABLE DELAYS BY CONTRACT HOLDER OR DEPARTMENT.—Notwithstanding any other provision of this Act, neither the Department nor the contract holder shall be liable under a contract executed under Section 302(a) of the Nuclear Waste Policy Act of 1982 for damages caused by failure to perform its obligations thereunder, if such failure arises out of causes beyond the control and without the fault or negligence of the party failing to perform. In the event circumstances beyond the reasonable control of the contract holder or the Department—such as acts of God, or of the public enemy, acts**

of Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather—cause delay in scheduled delivery, acceptance or transport of spent nuclear fuel and/or high-level radioactive waste, the party experiencing the delay will notify the other party as soon as possible after such delay is ascertained and the parties will readjust their schedules, as appropriate, to accommodate such delay.

"(b) AVOIDABLE DELAYS BY CONTRACT HOLDER OR DEPARTMENT.—Notwithstanding any other provision of this Act, in the event of any delay in the delivery, acceptance or transport of spent nuclear fuel and/or high-level nuclear waste to or by the Department under contracts executed under Section 302(a) of the Nuclear Waste Policy Act of 1982 caused by circumstances within the reasonable control of either the contract holder or the Department or their respective contractors or suppliers, the charges and schedules specified by this contract will be equitably adjusted to reflect any estimated additional costs incurred by the party not responsible for or contributing to the delay.

"(c) REMEDY.—Notwithstanding any other provision of this Act, the provisions of subsections (a) and (b) of this Section shall constitute the only remedy available to contract holders or the Department for failure to perform under a contract executed under Section 302(a) of the Nuclear Waste Policy Act of 1982.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, let me just take a moment because this deals with a provision that we believe clarifies the situation in light of the court decision over which most comment has been had.

What this amendment does is simply incorporate into the bill provisions that exist in the contract. My colleagues will recall that under the Nuclear Waste Policy Act of 1982, the Department of Energy was directed to enter into contracts with the various utilities that were involved in generating high-level nuclear waste, and so what we have done, my colleague and I from Nevada, is to have incorporated verbatim other than perhaps in the context there may be some grammatical changes, but verbatim the remedies that are provided in those contracts. They are found in article 9 of the contract, and the contract provides what occurs if a delay, referring to the delay of the opening of the repository, is unavoidable delay, and subparagraph (b) deals with avoidable delays.

So there has been talk that somehow this court case now casts a different light on everything, and as the Secretary of Energy indicated in her letter to each of us, that case absolutely has no impact on the debate. It is true that the court indicated there was an obligation on the Department of Energy but refrained from determining what the remedy was, and it is our view that the remedy is contained in the contract that the parties entered into. So we offer the amendment in that spirit.

I must say that I believe one of the biggest scams being perpetrated upon

us in this bill is the provision which deals with the shifting of liability from the utilities to the general taxpayer. Mr. President, 1982 is the genesis of our current nuclear waste policy. It was absolutely clear at the time that law was enacted that the financial responsibility for the disposal of nuclear waste rested upon the utilities, those that generated it. "Generators, owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for and the responsibility to pay the costs of interim storage of such waste and spent fuel until such time as the fuel is accepted by the Secretary of Energy." And then it goes on to talk about a number of instances throughout this particular act that it is the primary responsibility of the industry, the utilities.

Mr. President, this bill that has been introduced turns that concept upside down, totally upside down. Here is what is done under section 501 of the amendment that we are debating currently. It says that until the year 2002—I beg your pardon. I misquoted. I cited 501. It is section 401. It says until the year 2002, the maximum that can be assessed against the utilities, which is done on the basis of kilowatt-hours generated—one mill currently is the assessment for each kilowatt-hour. It says under this bill by statute now the maximum that can be levied against utilities is one mill. The General Accounting Office and others have concluded that even if no interim storage is added to the agenda or the responsibility of the Department of Energy, we are currently underfunded to the extent of about \$4 billion a year.

In plain and simple terms, that means the American taxpayer is going to pick up that liability, that responsibility, and that is fundamentally wrong. However you feel about nuclear energy, however you feel about how nuclear waste ought to be disposed of, it ought not to be cast upon the American taxpayer. These utilities are private sector utilities. They make a substantial amount of money. That is their right. But it ought not to be shifted on us. So I think that needs to be pointed out, No. 1.

No. 2, it gets even more clever. After the year 2002, the only amount that can be assessed against each utility is whatever their proportionate cost is, to the total amount of money that is appropriated by the Congress for nuclear waste. If we use the current year, for example, we would be talking about a third of a mill. That is something that is just, in my view, unconscionable. Not only has the General Accounting Office concluded there is a shortfall, but in a recent study that was commissioned by the Department called A Special Management and Financial Review, a report that came out in 1995, they point out that there is a shortfall, depending on whether you take a con-

servative or more expansive view, of anywhere from \$4 to \$15 billion.

So what is being done here is changing fundamentally who pays for this disposal of nuclear waste. Is it the utilities? That was the original premise of the law in 1982. These are private utilities, generating profits for their investors and shareholders. Or is that liability now to be shifted to the general taxpayer? That is what this bill does, it shifts that liability because it is clear, even if you take the length of time without renewal at all, these utilities will ultimately, by the year 2033, if the licenses are not extended, those utilities will cease generating electrical power. Therefore they will cease contributing into the fund. But the problem of the storage of high-level nuclear waste continues.

It is, to some extent, a crude analogy to the situation we have with our Social Security fund. Currently, more money is coming into that fund than is necessary to pay the recipients of Social Security. We all know sometime after the turn of the century, because of changing demographics, that changes rather dramatically. So, too, with this nuclear waste fund because, as these utilities go off line, some of them are scheduled, if they do not get an extension of their license, to cease operation in the year 2000, others in the year 2006 and, intermediately to the year 2033—but the waste just does not disappear. It becomes a financial responsibility for someone and that is why it is necessary to generate surpluses in the nuclear waste fund in order to deal with the storage problem later on. So I think my colleagues need to look at the budget implications of this. Because, in effect, we create an unfunded liability for the Federal taxpayers the way this bill is currently drafted.

Let me return to the specifics of the amendment just one more time before reserving my time and yielding whatever time my colleague may take to comment on this issue. That is to say, what we are saying amplifies the decision of the court, simply specifying what the remedy is. The remedy is that the delay is unavoidable. They simply have to reschedule the shipments. If the delay is deemed avoidable, that is if there is some culpability, then there is readjustment on the amount of fees the nuclear utilities pay into the trust fund. I must say I believe that is fair.

My colleague and I, from Nevada, have long recognized that, indeed, if the high-level nuclear waste repository is not available by the year 1998, if additional on-site storage is necessitated, then, indeed, the utilities would be entitled to a credit against any additional costs for interim storage that they would incur, and that is the thrust of this amendment.

I reserve the remainder of my time.  
The PRESIDING OFFICER (Mr. GRAMS). The Senator from Louisiana.



Mr. JOHNSTON. Mr. President, on behalf of Senator MURKOWSKI I yield myself 5 minutes.

This is sort of a version 2 of the Wellstone amendment, in that it seeks to take the rights of utilities and, secondarily, the rights of ratepayers of utilities, and abolish those by legislative fiat—which simply cannot be done. The rights of utilities and, indeed, the rights of the ratepayers of those utilities, have been fixed by the Nuclear Waste Policy Act of 1982 as amended by amendments in 1987 and by contracts between the utilities and the Department of Energy. The contracts between the utilities and the Department of Energy contain two provisions in article IX which relate to delays: A, involve unavoidable delay by purchaser or DOE, and, B, involve avoidable delays by purchaser or DOE. And those sections, A, and B, are part of the contracts between the utilities and DOE, set out, in part, the relative rights in the event of those delays.

What the Senator from Nevada would attempt to do is take those two existing provisions of contracts and state that those are the exclusive remedies, thereby leaving out another provision of those same contracts. Another provision of those same contracts in article XI says:

Nothing in this contract shall be construed to preclude either party from asserting its rights and remedies under the contract or at law.

In other words, the present contracts in article XI state that nothing precludes the assertion of the rights both under the contract and at law. What they would do is take that provision out and say that those sections, A and B, that I just read, are the exclusive remedies.

Mr. President, that is clever, but what the court has said last week is that "We hold that the Nuclear Waste Policy Act creates an obligation in DOE to start disposing of the spent nuclear fuel no later than January 31, 1998."

That is the law, decided only last week. And what the Senator from Nevada would say, that notwithstanding what the court has said we are going to write that out of this, and the exclusive remedy is that which he has just stated in his amendment, which is only part of what the contract says, I repeat—it is absolutely settled law that this Congress, under our Constitution, may not take away vested rights. When someone has a right under the law, the Congress cannot come in and take it away without subjecting themselves to damages.

Again, quoting from the *Winstar* case, and this is from July 1996, this very month, the Supreme Court says:

Congress may not simply abrogate a statutory provision obligating performance without breaching the contract and rendering itself liable for damages. Damages are al-

ways the default remedy for breach of contract.

They go on to quote in a footnote:

Every breach of contract gives the injured party a right to damages against the party in breach unless the parties by agreement vary the rules. The award of damages is the common form of relief for breach of contract. Virtually any breach gives the injured party a claim for damages.

Mr. President, this is not a surprising new precedent of the Court. It is a principle of law as old as John Marshall and the Supreme Court and the Constitution. So for my friends from Nevada to come along and say the exclusive remedy is subsections (A) and (B) of his amendment, I will not say it is ludicrous, Mr. President, out of respect for my colleagues, but let's say that the argument does not have any weight and is totally contrary to that which is settled law of the U.S. Supreme Court.

Mr. President, at this time, I yield 5 minutes, or such time as the Senator from Washington requires.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, there are some occasions in this body in which a bit of institutional memory is truly of value. And, in my case, I have a memory which has been reinforced by reading the CONGRESSIONAL RECORD of the creation of the Nuclear Waste Policy Act of 1982.

Interestingly enough, the managers on both sides of the party aisle here were Members of that Congress. But the distinguished Senator from Louisiana, I believe, was perhaps the most knowledgeable Member of the body at that time, as he is today, on this particular subject.

More than 14 years ago, in April 1982 when this bill was being debated, this is what the Senator from Louisiana said:

The bill before the Senate today requires the Federal Government to undertake definitive and specific actions to assume the responsibility for nuclear waste disposal which existing law reserves to it. We can attempt to avoid this responsibility in the context of this particular Congress, but we will never finally escape the necessity of enacting legislation very similar to this bill. It is a task that no one but Congress can perform.

The Senator from Louisiana went on to say:

The aim of this bill is to provide congressional support which will force the executive branch to place before Congress and the public real solutions to our nuclear waste management problems. A schedule for Federal actions which could lead to a site specific application for a license for the disposition of nuclear waste in deep geologic formations is established in title IV.

The Senator from Louisiana was, obviously, an optimist at that point, as were all of those who overwhelmingly supported him in passing that bill, this Senator included.

I cannot imagine that the Senator from Louisiana, whose bill included this deadline referred to by the District

of Columbia Circuit Court of Appeals last week "beginning not later than January 31, 1998, the Federal Government will dispose of the high-level radioactive waste or spent nuclear fuel involved," I cannot imagine the Senator from Louisiana anticipated that we would have made so little progress by the date upon which we are debating this bill. He was convinced, and we were convinced, that by this year, we would certainly know what we were going to do with this nuclear waste on a temporary basis and be much further along the road to finding a long-term solution for the problem.

As a consequence of an overoptimistic view of what might happen then, we have collected from utilities of the United States some \$12 billion. We have spent close to \$6 billion of that attempting to characterize a permanent nuclear waste repository in Nevada, but we are certainly nowhere near as close to reaching a conclusion to this challenge as we expected to be in 1982 when we passed this bill, and we spent more money on it, money that comes out of the pockets of American citizens in their utility bills.

Given that degree of frustration, given the almost infinite ability of those who oppose any major decision of this nature to delay that decision through bureaucratic requirements, through court tests and the like, we now have been faced with the necessity of finding at least a temporary repository for this nuclear waste to meet the very requirements that we laid down in 1982. That, obviously, is what this bill is designed to do.

In fact, by saying that we ought to begin by December 31 of 1998, even the sponsors of the bill already have let some time slip by. But, Mr. President, at this point, with the failure to meet the schedule that we wanted to meet in 1982, with the expenditure of literally billions of dollars, with this nuclear waste piling up in various plants in 34 States, with the real challenge of what to do with our defense nuclear waste, it is simply time to reach at least an interim decision.

I expect that the Senators from Nevada, and many other Senators as well, are firm in the belief that wherever the temporary storage site is located will end up being the permanent storage site. I suspect that may very well be true, but I do believe that we are far enough along this road that it is appropriate for the Congress to make that decision and to make that decision now.

The waste is there, the environmental threat is there, the physical dangers are there, the necessity to gather it together in one place is there. We know enough now about the policy to be able to make that decision to be there. We are simply carrying out under the leadership of the Senator

from Alaska and the Senator from Louisiana the very policies that this Congress and a former President of the United States felt to be appropriate policies in 1982, and in doing so, we will save the taxpayers money, we will help the environment, we will help our overall safety, and we will, one hopes, allow the Senator from Louisiana to retire, as he has regrettably chosen to do, from the Senate knowing that he has completed the job that he started in 1982 or earlier.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Alaska has control of 17 minutes; the Senators from Nevada have control of 20 minutes, 39 seconds.

Mr. REID. I am wondering if we could have a vote on this amendment and go to something else?

Mr. MURKOWSKI. I would be very pleased to. Is that the wish of the Senator from Nevada?

Mr. REID. Yes.

Mr. MURKOWSKI. I yield back the remainder of our time.

Mr. REID. That is, on this amendment that is true.

Mr. MURKOWSKI. Both sides are willing to yield back the remainder of their time and ask for a voice vote.

The PRESIDING OFFICER. With all time being yielded back on the amendment, the question now is on agreeing to the amendment.

The amendment (No. 5075) was rejected.

Mr. JOHNSTON. I move to reconsider the vote.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I wonder if the Senator from Alaska has the unanimous consent agreement that was being typed up for our submission?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska.

Mr. MURKOWSKI. On behalf of the leader, I ask unanimous consent that the vote occur on or in relation to the amendment number 5073 at 3:30 p.m. today, and notwithstanding the agreement of July 24, the vote occur on final passage of S. 1936 at 4:55, and that paragraph 4 of rule XII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. I thank my colleagues from Nevada for expediting the process.

Mr. REID. I say to my friend from Alaska, I think it would be appropriate the time would be equally divided between now and 3:30 on the amendment offered by the Senators from Nevada. I ask unanimous consent that that be the case.

Mr. MURKOWSKI. That is agreeable. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

#### AMENDMENT NO. 5073

(Purpose: To specify contractual obligations between DOE and waste generators)

Mr. BRYAN. Mr. President, I send amendment No. 5073 to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes amendment numbered 5073.

Mr. BRYAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new provisions:

#### "SEC. . COMPLIANCE WITH OTHER LAWS.

"Notwithstanding any other provision of this Act, the Secretary shall comply with all Federal laws and regulations in developing and implementing the integrated management system.

#### "SEC. . COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT.

"(a) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—Notwithstanding any other provision of this Act, the Secretary shall comply with all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in developing and implementing the integrated management system.

"(b) JUDICIAL REVIEW.—Notwithstanding any other provision of this Act, any agency action relating to the development or implementation of the integrated management system shall be subject to judicial review."

Mr. BRYAN. Mr. President, much has been said over the past few hours today and earlier during the course of our discussion of S. 1936 about what I consider one of the most serious defects of this piece of legislation in that it emasculates the environmental protections that have been drafted for more than a quarter of a century, most of which with bipartisan support and in effect says with respect to this particular issue they shall not apply.

So what we are doing is we are giving people an opportunity, our colleagues an opportunity, to express themselves on the environmental issue, very, very simple.

The first part of this amendment says:

Notwithstanding any other provision of this Act, the Secretary shall comply with all Federal laws and regulations in developing

and implementing the integrated management system.

My colleagues will recall the section 501 under the current provisions, as amended, is very convoluted and says:

If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act . . . or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act. . . .

This Mr. President, makes it very, very clear. If you do not want all of these environmental laws preempted, this is the way to correct it. Straightforward, no ifs, ands, or buts: Notwithstanding any other provision of this act, the Secretary shall comply with all Federal laws and regulations in developing and implementing the integrated management system.

I note for my colleagues, because the two Senators from Nevada have been involved in this issue now for the last 14 years, we made a policy judgment not to include State law so it could not be asserted that this was an indirect effort to allow the Nevada legislature to implement some type of barrier that would make this impossible.

So this is straightforward. It does not get any cleaner, it does not get any clearer, and does not get any easier to understand. If you are truly opposed to preempting all of these laws, this is the amendment that does it.

If you also believe that there is a purpose in America for the National Environmental Policy Act, this amendment provides for the full application and judicial review. Under the current bill the provisions say on the one hand that the Environmental Policy Act will apply, and then go on to say at some considerable length, but it shall not apply to the various citing alternatives. I will provide that.

Section 204, subsection (f) says the National Environmental Policy Act shall apply. Then you get down into subsection (B).

Such Environmental Impact Statement shall not consider —

- (i) the need for interim storage. . .
- (ii) the time of the initial availability of the interim storage. . .
- (iii) any alternatives to the storage of [nuclear waste].

\* \* \* \* \*

(v) any alternatives to the design criteria. . .

(vi) the environmental impacts of the storage [beyond the period of initial licensure].

You will recall the National Academy of Sciences said those should consider 10,000 years and beyond.

This bill would limit it to just the period of time of the initial licensure. And so, Mr. President, this is a clean, straightforward attempt to say that the full array of provisions under the National Environmental Policy Act shall apply.



Let me just say that the Council on Environmental Quality—that is the council that was established when Congress passed the National Environmental Policy Act in 1969—went on to say—and I quote from the letter. “S. 1936”—that is essentially what we are dealing with:

S. 1936 renders the NEPA process meaningless by precluding the incorporation of NEPA's core values which are necessary for making informed and timely decisions essential for protecting public health, safety and environmental quality. Consequently, the bill all but locks into place both interim and permanent storage sites by giving decision-makers no reasonable options \* \* \*

It is that same rationale that has caused the Administrator of the Environmental Protection Agency, to point out that in effect we do not have the provisions of the National Environmental Policy Act under the provisions of the bill as now constituted.

So, Mr. President, I think we can make this very clear and very simple. If Senators want these environmental laws to apply, if they believe that the Environmental Policy Act ought to be applicable to this very critical decision, in which we all agree that we are dealing with material that is not just kind of messy, kind of unpleasant, to be a little bit difficult and inconvenient to clean up, we are talking about stuff that is deadly for tens of thousands of years, the highest kind of risk to public health and safety. Yet, the nuclear industry, and its supporters, have the audacity to emasculate the application of the environmental laws and in effect try to reduce the impact of the National Environmental Policy Act to a hollow and pale facsimile of what the law provides in terms of protections for various policy initiatives, et cetera. Mr. President, I reserve the remainder of my time and yield the floor.

Mr. MURKOWSKI. Mr. President, we now have how much time?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Mr. MURKOWSKI. It is my intention to speak for about 4 minutes and give the Senator from Louisiana about 8 minutes, and then reserve the balance of my time.

Mr. President, this is another innocuous-sounding amendment which, in reality, is a bonanza for lawyers, and there are a lot of lawyers in this country. We have general laws in this country to cover situations that Congress did not specifically consider. The courts understand that. So when there is a conflict between a general law and a specific law enacted with a particular facility or purpose in mind, the court follows the specific law.

With this act we are considering, the specific conditions to apply to specific nuclear waste repositories—an interim repository and a permanent repository. What the amendment of the Senator from Nevada attempts to do is to pro-

vide broadly written, general laws with the same standing as the specific directions we are providing in this bill. There is an amendment, Mr. President, carefully crafted to confuse the courts, confound the legal process, and enrich the lawyers.

This amendment is going to delay the process leading to a responsible solution to the nuclear waste problem. I implore my colleagues to avoid this trap. That is what it is. This is an antienvironmental amendment.

Let me repeat that, Mr. President. This is an antienvironmental amendment. It does not address, obviously, the problem we have with the nuclear waste. If you want to solve a huge environmental problem in this country, you want to oppose this amendment.

If this amendment prevails, Mr. President, the Department of Energy is going to be mired in litigation. It will be mired in red tape. It will be mired in delay. We are simply not going to be able to get there from here with a responsible answer to this problem. Taxpayer dollars are going to be squandered in litigation if this amendment is adopted. The problem of nuclear waste will continue to persist, and, as a consequence, we will be right back to zero.

I retain the balance of my time and yield 7 or 8 minutes to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I thank my colleague for yielding. Mr. President, if you want to frustrate any ability to have a nuclear waste repository, vote for this amendment, because, to be sure, this would make it impossible to build.

Now, Mr. President, this has been advertised as an attempt only to make this subject to the same environmental laws that every other process has. Not so, Mr. President. Under the present Administrative Procedures Act, there is an appeal to the courts only for a final agency action. That is section 704 of the Administrative Procedures Act.

What this amendment would do is to say that any agency action related to the development or implementation of the management system shall be subject to judicial review—any agency action.

So, Mr. President, I guess anything that the agency does, whether it is a major Federal action or not, whether it is a final agency action, would be subject to judicial review. They would be able to go to court. If you wake up in the morning and purchase a cup of coffee, I guess that is some kind of agency action, not final, but subject to judicial review. It would mean it would be impossible to do anything under this system.

Mr. President, much has been made of the fact that environmental impact statements have been waived here. The fact of the matter is, Mr. President, existing legislation presently calls for a waiver of virtually every provision al-

ready contained herein. For example, Mr. President, we state that such environmental impact statement shall not consider any alternatives to the storage of spent nuclear fuel at the interim storage facility.

Now, why did we put that in the initial legislation back in 1982? Why did we bring it forward in 1987? And why do we have it here? Because, Mr. President, there are endless alternatives to storage of spent nuclear fuel.

You can shoot it into space and into the sun. That has been seriously suggested. You can send it down to the ocean bottom and bury it in the deep mud down there. You can have detonation underground in caverns. You can reprocess in light-water reactors, you can reprocess in liquid light-water reactors, you can have other space launches, deep bore holes in the Earth. Mr. President, all of these alternatives. But this language would have to be evaluated under the National Environmental Policy Act, notwithstanding the fact that Congress has spoken very clearly on the need for a nuclear waste repository.

Mr. President, this would endlessly delay this matter by having to do very expensive studies on matters which have already been rejected by the Congress. Another provision on which the law already provides no need for a NEPA statement is an alternative to the site of the facility as designated by the Secretary. The site here is Yucca Mountain.

Now, the Congress has clearly spoken in naming Yucca Mountain. That is why we have said in previous legislation that you did not need to do an alternative NEPA statement to examine, for example, the granite in Maine or the different kind of geologic formations in Washington, for example, or the salt domes in Mississippi. There are potential sites all over this country and, but for the waiver of a NEPA statement, you would have to go and revisit each of these facilities all over the country, each of these locations. That is, in each of these cases, the law already provides for a waiver of the NEPA statement to consider these various alternatives.

The same is true for the alternatives to the design. The same is true for the need for the interim storage facility.

Mr. President, rather than bring forward some new series of waivers, we are really bringing forward what existing law provides and has already been waived as part of the Nuclear Waste Policy Act.

Mr. President, it is not too much to say that if we adopted this amendment you would never be able to build a repository in the United States or an interim facility because you would put on endless requirements for NEPA statements on matters to examine sites all over the United States, to examine alternatives to repository disposal and interim disposal, on matters

that would be very expensive to investigate and very difficult to prove, and would take many, many years to determine.

Most especially, Mr. President, by providing that there would be appeal from any agency action as opposed to final agency action, final agency action appeals are provided in this legislation, but interim agency actions are not. If you made all agency actions appealable, it would simply be impossible to have a repository.

The PRESIDING OFFICER (Mr. COVERDELL). The time of the Senator has expired.

Mr. REID. Would the Chair advise the Senator from Nevada how much time we have.

The PRESIDING OFFICER. The Senator's side has 12 minutes, and the other side has 8 minutes.

Mr. REID. I want to yield to my friend from California, but prior to that, I want to discuss a number of things.

First, this is a good deal for the proponents of this bill. They want to waive all the environmental laws, and they are saying the reason is because people might want to appeal, they might be protecting their rights, which is what you can do in this country.

That is why we have NEPA. That is why we have all the laws set forth in the chart behind us.

I also want to drop back a few minutes, Mr. President. The senior Senator from North Dakota was here. He was concerned about terrorism, but because we were running out of time on an amendment, we could not respond to his concern. I want to take a few minutes to respond to him. I hope if the Senator is not listening, his staff is, because this is, I think, extremely important to the question he asked.

We have here a letter from the Blue Ridge Environmental Defense League. Among other things, they say in this letter, dated July 29, 1996—what they are basically explaining is that nuclear waste is dangerous and terrorists will get to the nuclear shipments, and they proved it.

Two shipments arrived at the Military Ocean Terminal at Sunny Point in North Carolina, were loaded onto rail cars, and then transported overland to SRS. We were able to track both of these shipments from their ports of origin in Denmark, Greece, France, and Sweden across the Atlantic to North Carolina to SRS.

These shipments cannot be kept secret so long as we live in a free society.

Our actions were peaceful, but we proved that determined individuals, on a shoestring budget, can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta, the dangers posed by domestic or international terrorists armed with explosives makes the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

I ask unanimous consent that the letter dated July 29 from the Blue

Ridge Environmental Defense League be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE,  
Marshall, NC, July 29, 1996.

U.S. SENATE,  
Washington, DC.

DEAR SENATOR: The Nuclear Waste Policy Act of 1996 (S. 1936) would place in jeopardy the lives of millions of American citizens by transporting 15,638 casks of highly radioactive material over railways and highways of this nation. This attempt at a quick-fix for the nuclear waste dilemma would cause more problems than it attempts to solve. The people who would bear the greatest burden would be the 172 million Americans who live nearest the transportation corridors. S. 1936 is a legislative short-circuit that will make us less secure as a nation and which will dump the costs of emergency response on the states and local governments.

The Blue Ridge Environmental Defense League began in 1984: our work takes us throughout the southeast. Since 1994 we have observed the international shipments of spent nuclear fuel (SNF) from foreign research reactors (FRR) to a disposal site at the Savannah River Site (SRS) in South Carolina. Two shipments arrived at the Military Ocean Terminal at Sunny Point (MOTSU) in North Carolina, were loaded onto rail cars, and then transported overland to SRS. We were able to track both of these shipments from their ports of origin in Denmark, Greece, France, and Sweden across the Atlantic to North Carolina to SRS. We observed the fuel shipment when they arrived at MOTSU. We watched the SNF transfer from ship to train and followed it through the countryside of coastal North and South Carolina. Our reason for doing this was to alert people along the transport route about the shipments through their communities. We rented a light plane and flew out over the SNF ships when they reached the three-mile limit. Television news cameras accompanied us and transmitted pictures for broadcast on the evening news. If we can track such shipments, anyone can. These shipments cannot be kept secret so long as we live in a free society. Our actions were peaceful but we proved that determined individuals on a shoestring budget can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

Our work in North Carolina, Tennessee, and Virginia takes us to many rural communities. Emergency management personnel in these areas are dedicated volunteers, but they are unprepared for nuclear waste. Volunteer fire departments in rural counties are very good at putting out house fires and brush fires. While serving as a volunteer fire fighter in Madison County, NC, I had the privilege of working with these men and women. We took special training to handle propane tank emergencies utilizing locally-built water pumper trucks. More sophisticated training or equipment was prohibitively expensive and beyond our financial means. Traffic control is a consideration at an emergency scene. Any fire or accident tends to draw a crowd. Onlookers arrive as soon as the fire department—sometimes sooner in remote areas. There are always

traffic jams reducing traffic flow to a one-lane crawl day or night, fair weather or foul. The remote river valleys and steep grades of Appalachia are legendary. At Saluda, NC the steepest standard gauge mainline railroad grade in the United States drops 253 feet/mile (4.8% grade). The CSX and Norfolk Southern lines trace the French Broad River Valley and the Nolichucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern RR crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high level nuclear waste transport as soon as 1998 according to S. 1936.

County emergency management personnel are entrusted with early response to hazards to the public in western North Carolina communities. When we asked about their readiness to respond to a nuclear transport accident, they answered professionally saying, "We'll just go out there and keep people away until state or federal officials arrive." This may be the best that can be done while a fire burns or radiation leaks from a damaged cask. In a recent interview, one western NC emergency coordinator said, "There is no response team anywhere in this part of the state and, for the foreseeable future, there is no money in local budgets to equip us with any first response to radioactive spills."

The concerns of local officials reflect their on-the-scene responsibility while state officials, faced with limited budgets and staff, make plans based on current bureaucratic realities. The Nuclear Waste Policy Act and Amendments of 1982 and 1987 place large-scale nuclear transportation scenarios decades in the future. This fact and the limited resources of existing emergency planning departments make the timeline for preparation for nuclear accident response completely inadequate for shipments beginning as soon as 1998. In North Carolina's Division of Emergency Management, the lead REP planner has four staffers and a whole state to cover. It is not possible under these circumstances, to be ready with credible emergency response plans, training, and equipment in two years.

I am asking you to oppose this expensive and dangerous legislation which would place an unfair and unnecessary financial burden on communities and which would place at risk the health and safety of millions of American citizens.

Respectfully,

LOUIS ZELLER.

Mr. REID. Mr. President, we also know that they are running roughshod over environmental laws in this country—"they" being the proponents of this legislation. We have here a statement from Public Citizen, which says, "If you believe in environmental standards, don't vote for S. 1936. S. 1936 severely weakens environmental standards by carving loopholes in the National Environmental Policy Act"—that is what we call NEPA—"eliminating licensing standards, forbidding the EPA from raising radiation release standards."

Mr. President, we received from the President of the United States office late last night a reiteration of why he believes this legislation is bad and why



it should be voted down. Among other things said in this letter from John Hilly, assistant to the President of the United States, it says:

The bill undermines environmental laws and processes. Americans deserve full public health protection. Yet, this bill renders the National Environmental Policy Act meaningless, undermines EPA and the Nuclear Regulatory Commission regulatory process for public protection from radiation exposure.

It is a good deal the proponents have—just wipe out the environmental laws and say we have to get rid of nuclear waste. The powerful nuclear lobby has been willing to run roughshod over the lives of Americans for too many years. It is time we stopped it. There is a permanent repository being characterized in Nevada. The only reason they want to go with the interim storage is to save money. It is not going fast enough for them. They don't care about environmental laws. They care about the bottom line, the dollar amount. They are making tons of money.

Mr. President, on this chart are the companies pushing this. Look, Mr. President, at the percent of net income relative to revenue: 20 percent of their revenues come from nuclear power. Here is 17.25 percent, 17.7 percent, 20.5 percent, 22.75 percent, and 25 percent. They are raking in the money. But it is not enough. They want to make more. They don't care about the rights and liberties of Americans that are protected with the laws called Clean Air, Clean Water, Superfund, and other such laws.

I understand my friend from California has a question.

Mrs. BOXER. I do. I would like to address a couple of questions. First, I want to thank both of you for your courage. I think Senator REID has shown us that there is a lot of power behind this particular bill—economic power—and it is always difficult to stand up against that. So my thanks to you for doing that. That is why we need people like you in the U.S. Senate. Your team leadership has been noticed by many throughout this great country.

I want to also thank Senator CONRAD and Senator REID for talking about the issue of terrorism, because having to close our eyes to the terrorist threat after what we have been through is—I can't even fathom it. I think Senator CONRAD was correct to bring this up. The answer from Senator REID, I found, to be very illuminating.

This is my basic question: Did we not have in this Senate, over many years, a lot of struggles and fights to win passage of the very legislation that would be waived in this act, and wasn't that struggle and that fight a bipartisan one, where we came together, from different parties sometimes, and sometimes with different viewpoints, to pass the Clean Air Act and the Clean Water Act?

Mr. REID. I respond to my friend from California that most of this legislation began during the period of Richard Nixon.

Mrs. BOXER. That is correct.

Mr. REID. Take clean water. The reason the Clean Water Act was initiated is because the Cuyahoga River in Ohio caught fire, not once, but three times. After the third fire, people around the country started saying, "Maybe we should do something about this." I respond to my friend from California that when the Clean Water Act was initiated, 80 percent of the rivers and streams in America were polluted. Now, some 25 years later, those numbers have almost reversed. Approximately 80 percent of the streams and rivers in America—you can swim in them and drink out of them. They are in pretty good shape. It is not perfect. We have a long way to go, but we have done pretty well.

Mrs. BOXER. Let me say that I have the honor and privilege of serving with my friend, Senator REID, on the Environment Committee, and that is what brought me to the floor today.

I ask Senator BRYAN this question: Is it not true that the waste that will be moved throughout this country and placed in this repository is dangerous waste that could last between thousands of years to even a million years or millions of years?

Mr. BRYAN. The Senator from California is correct. This is among the most dangerous material on the face of the Earth. We are talking not about something that would be a problem for 5, 10, 15, 20 years, even 2 or 3 lifetimes. The whole thrust of the bill that is before us is to cut corners, try to save a few bucks here, to impose artificial deadlines that can never be met, all to the disadvantage of public health and safety.

Very seldom do you hear the nuclear utilities talk about doing something to protect public health and safety. It is always, "This costs too much," "Delay this a little bit," "It would be inconvenient or difficult." The whole thrust of these laws is a balancing of public health and safety, and the fact that it may take a little longer, it may be a little more difficult, was a bipartisan consensus, as my senior colleague pointed out, during the term of Richard Nixon. NEPA was enacted in 1969, the first year he served as President. It was a bipartisan consensus in America. This legislation would shatter that and subject those who would be affected by this decision—at least 51 million people along the transportation routes—to a lower standard of protection for public health and safety.

Mrs. BOXER. The point of my question is that here we have the most dangerous elements known to humankind. And of all the things we should be doing, it seems to me, when we decide on a repository, is to make sure that

every one of those acts is complied with—Clean Air, Clean Water, National Environmental Policy Act, Community Right to Know, Safe Drinking Water Act—and that is why I am so strongly supportive of the Senators' amendment.

All of the response about being duplicative and inconsistent—I respect my friends on the other side of the debate, but we have a difference in the way we view the public interest. I have nothing but respect for those who hold a different view. But I say this: If it is duplicative and there is even one question about it, why not vote for this amendment and be doubly sure, if you will, that our people are protected from the most harmful elements known to humankind? I thank my colleague for yielding, and I yield back my time to him.

The PRESIDING OFFICER. The Chair advises that all the time of the Senator from Nevada has expired. There are 8 minutes remaining on the other side.

The Chair recognizes the Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair. I observe, for the benefit of my friend from California, for whom I have the utmost and fondest regard, that accepting this amendment means her State gets considered as a possible alternative for interim storage. The State of California currently has approximately 1,319 metric tons of high-level nuclear waste that is stored in California. It is estimated that, by the year 2010, there will be 2,639 metric tons.

So the point is, if we leave it where it is, which is what we will do with the amendment offered by my friends from Nevada, waste is simply going to stay where it is. As a consequence, at some point in time somebody will have to do something with it. To do something with it implies you have to move it. We have heard fear, fear, fear. We move money in armored cars. We used to move it in stagecoaches. We protected it. We protect it in armored cars. We will protect waste, if you will, in casks. This movement is not just helter-skelter.

They have moved, in Europe, 30,000 metric tons of high-level nuclear waste. They moved it safely. That does not mean an accident could not happen or that a terrorist activity could not happen. But they have moved it. It has not been designed, if you will, to be easily lifted. It is very, very heavy and very difficult. The containers are built to maintain a degree of security unknown in any other type of engineering device.

So while there is a risk associated with all aspects of this, there is also a reality of inconsistency in this amendment because the Senator from Nevada

indicated that by permitting one repository in Nevada as a permanent repository, he has acknowledged that the material has to get there somehow.

So you have the potential risk, if you will, if you simply say we are going for a permanent repository and we are not going to consider an interim repository. The stuff has to move anyhow. There is a risk associated with movement.

Mrs. BOXER. Will the Senator yield? Mr. MURKOWSKI. I am sorry. I have a limited time, in all due respect to my friend from California.

Adopting a NEPA process open to alternatives opens up new areas for consideration.

There is behind us the map showing all of the places other than a Nevada test site that could be used for an interim central storage facility. You can see them. They are all over the country.

If you say yes to this amendment, you may be saying yes to nuclear waste storage in your State or near your State. The possibilities include New York, Hawaii, Connecticut, Washington, Maine, Iowa, California, Montana, North Dakota, South Dakota, Arkansas, Wisconsin, Oregon, and others. There are potential locations in 40 other States of about 605,000 square miles; 20 percent of the continental United States. You have to put it somewhere.

So what we have here is an effort by the Senators from Nevada that may sound reasonable at first glance but it sets this whole process back 15 or 20 years. It allows all the decisions we are making today to be reconsidered. It allows them all to be challenged in the courts. It guarantees further delay, further gridlock, further stalemate, and it will, therefore, force the ratepayers in all of these States not to pay once but to pay twice, to continue to pay into the nuclear waste fund and to build new interim reactor storage sites because some of them are full at this time.

This is a giant loophole for the Government to use in avoiding its promise to store and handle waste. It is an effort to derail the process.

Senate bill 1936 does not—and I emphasize “does not”—exempt the establishment of an interim or final repository for NEPA. Instead, it requires an EIS for both the interim and permanent repository. We require it.

Furthermore, S. 1936 is consistent with NEPA and the Executive Order 12114 which implements NEPA. NEPA and the Executive order clearly anticipate the situation we have here. There are some decisions of policy that are within the agency's power to affect. There are others that are not. Congress may properly reserve some decisions for itself and allow other decisions to be considered in the NEPA process. Otherwise, we would never get anything done around here.

Senate bill 1936 identifies six decisions that are appropriate for congressional consideration only. These six decisions involve whether we need a repository, when we need a repository, and where the repository should be built. So it is whether, when, and where. These are fundamental decisions of policy.

I say to my colleagues that there are some things that we have the responsibility to decide and decisions that we are paid to make. These are some policies that we alone must determine, and that is our job.

If we adopt this amendment, we are being irresponsible because it will simply put off the process, put into the courts and delay beyond this administration to sometime in the future, and we will never address it.

What this amendment would do is to throw all of the cards back up in the air again as if to say Congress has made the tough decisions and cast the tough votes, but we are going to ignore all of that and revisit all of these decisions that we have already made.

Mr. President, if we are going to allow the agencies to revisit all of the decisions of Congress, either through NEPA or some other means, then there is no need for us to be here. We might as well go home because there is nothing for us to do.

So do not be fooled by this amendment. This is an amendment designed to derail responsible action to address nuclear waste in a repository. It looks reasonable at first glance, but it merely is a means to upset the applecart and put us back to where we were in 1980.

Mr. President, I yield all of my remaining time.

I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska to lay on the table the amendment of the Senator from Nevada. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 73, nays 27, as follows:

[Rollcall Vote No. 258 Leg.]

#### YEAS—73

Abraham	Conrad	Graham
Ashcroft	Coverdell	Gramm
Bennett	Craig	Grams
Biden	D'Amato	Grassley
Bingaman	DeWine	Gregg
Bond	Dodd	Hatch
Brown	Domenici	Hatfield
Burns	Dorgan	Heflin
Byrd	Eaton	Helms
Campbell	Faircloth	Hollings
Coats	Frahm	Hutchinson
Cochran	Frist	Inhofe
Cohen	Gorton	Inouye

Jeffords	McCain	Simon
Johnston	McConnell	Simpson
Kassebaum	Mikulski	Smith
Kempthorne	Moseley-Braun	Snowe
Kerry	Murkowski	Specter
Kerry	Nickles	Stevens
Kyl	Nunn	Thomas
Leahy	Pressler	Thompson
Levin	Robb	Thurmond
Lott	Roth	Warner
Lugar	Santorum	
Mack	Shelby	

#### NAYS—27

Akaka	Feingold	Moynihan
Baucus	Feinstein	Murray
Boxer	Ford	Pell
Bradley	Glenn	Pryor
Breaux	Harkin	Reid
Bryan	Kennedy	Rockefeller
Bumpers	Kohl	Sarbanes
Chafee	Lautenberg	Wellstone
Daschle	Lieberman	Wyden

The motion to lay on the table the amendment (No. 5073) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. KERRY. Mr. President, I supported the motion to table the Bryan amendment to S. 1936 not because it included a requirement that the Department of Energy comply with the National Environmental Policy Act [NEPA] in the establishment of an interim storage facility at the Nevada nuclear test site—language which I support—but because it also included unjustifiably sweeping judicial review language. While I support judicial review of all final agency actions, this provision goes well beyond final rulemakings and would be unnecessarily burdensome and costly to both the Federal Government and the private sector. In my judgment, should this bill become law over my objections, this judicial review could cause the entire process of establishing the repository to grind to a halt.

Congress passed NEPA in 1969 to ensure that Federal agencies integrate environmental values—as well as social, economic, and technical factors—in the decisionmaking process. Section 102 of NEPA requires environmental impact statements [EIS] for proposed major Federal actions which would significantly affect the quality of the human environment. The EIS process includes alternatives analysis in which reasonable alternatives to the proposed action are explored in an effort to present clear choices to decision-makers and the public, and to ensure that the most environmentally sound course of action is taken.

S. 1936 limits or eliminates the application of a number of NEPA's health and environmental standards with respect to the establishment of a temporary waste repository. For example, in order to expedite the interim repository's opening it waives any regulations for the protection of public health and the environment if the regulations would delay or affect the development, licensing, construction or



operation of the interim storage facility.

I strongly believe that any facility in the United States designed to store spent nuclear fuel should be required to comply with NEPA. Therefore, I wholeheartedly support the first half of the Bryan amendment which instructs the Secretary of Energy to comply with all NEPA requirements.

My concern with the Bryan amendment stems from its language which would add sweeping judicial review provisions to this bill. It would subject to judicial review any agency action relating to the development or implementation of the integrated management system. I firmly support judicial review for all final agency actions. However, I am concerned that including any and all agency actions, not just final actions, may produce innumerable interlocutory judgments.

The cost to taxpayers likely would be very high, and the repository to be established under the terms of this bill likely would be drowned in a sea of red-tape. That is not in our Nation's best interests despite the capable efforts of the Senators from Nevada to do everything in their power to prevent or delay the establishment and operation of a repository in their State. Once our Government makes a decision to establish a repository for nuclear wastes which is badly needed—although I do not believe we are ready to make that decision with the confidence we should have for a step of this consequence—we should not deliberately set up the effort to fail by tying it in legal and procedural knots.

It appears unlikely that any additional amendments to this bill will be offered or approved that would restore the applicability of NEPA provisions. Therefore, because the legislation exempts the repository establishment process from the application of NEPA and other environmental statutes, I will oppose final passage of S. 1936. I am hopeful this bill in its current form will not be enacted. The President has said he will veto it in this form, and I would urge him to do so.

But, Mr. President, I wish to emphasize that I do not take this stance with enthusiasm. Our Nation needs a repository for nuclear waste. We should not continue ad infinitum to store it temporarily at the sites where it has been produced. That is neither safe nor prudent. Our Government needs to redouble its efforts to reach a conclusion about the establishment of a permanent repository, and it needs to do that with alacrity.

Unfortunately, this legislation to create a temporary repository is not the answer. Establishing a temporary facility necessarily brings difficult problems that would not be present with a permanent facility. Exempting the facility and the process of establishing it from environmental laws and safeguards is unacceptable.

It is not inconceivable, even if quite unlikely, that these problems can be remedied this year in a way that would permit me to support this legislation. The first requirement is that the process be subjected to compliance with environmental laws and regulations. This could be accomplished in a conference committee. If it is not, I will continue to oppose it.

But if its flaws are not adequately repaired, and the bill either is not finally passed by the Congress or is vetoed by the President, the 105th Congress needs to begin grappling early and seriously with this matter. I hope when it does so, Mr. President, that it will take a different and more responsible course than has been taken in the current Congress.

#### SECTION 101(g)

Mr. LEVIN. Mr. President, at page 9, lines 20-23 of the manager's substitute amendment, section 101(g) provides that "subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste. \* \* \*". Is it the manager's intention that this language prevent contract holders from recovering damages or other financial relief from the Government on account of DOE's failure to comply with the 1998 deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit in any way the rights of contract holders, their ratepayers, or those agencies of the State governments that represent ratepayers, from enforcing any right they might have, including the right to hold the Federal Government liable financially, under the 1982 act and the contracts executed pursuant thereto. Section 101(g) is expressly subject to section 101(f), which makes clear that rights conferred by section 302(a) of the Nuclear Waste Policy Act of 1982 or by the contracts executed thereunder are not affected by this bill, including section 101(g). To the extent that act or the contracts established a 1998 deadline and the DOE fails to meet that deadline, it is not the manager's intent that the substitute amendment in any way restrict the relief available to those damaged by the failure to meet the deadline.

Mr. LEVIN. Is it correct then that the manager does not intend that the amendment would restrict the scope of remedies available to the plaintiffs in the litigation in which the Court of Appeals of the District of Columbia has recently held that the 1998 deadline is a binding obligation of the Federal Government?

Mr. MURKOWSKI. That is correct. It is not the manager's intent that the language of section 101(g) proscribe the

court of appeals or any other court from awarding monetary relief or other financial remedies to those who have paid fees to the Government under the 1982 act and the contracts, or those who will incur additional expense on account of the DOE's failure to comply with any right conferred by 1982 act or the contracts.

Mr. LEVIN. If a deadline were imposed by the Nuclear Waste Policy Act of 1996, as reflected by the substitute amendment, as well as by the Nuclear Waste Policy of 1982 or the contracts executed thereunder, is it the manager's intention that section 101(g) would proscribe financial liability for failure to meet the deadline to the extent it is imposed by the 1982 act? For instance, if DOE were to fail to commence the acceptance and emplacement of spent nuclear fuel and high level radioactive waste by November 30, 1999 or thereafter, would the amendment proscribe a court from imposing financial liability on DOE if a court ruled that DOE's inaction constituted a failure to comply with the deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982 and the contracts?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the rights or remedies available under the Nuclear Waste Policy Act of 1982 or the contracts executed thereunder. If a failure by DOE to comply with any deadline established in the amendment also constituted a failure to comply with a deadline established by the 1982 act or a contract under that act, it is not the manager's intent that section 101(g) modify the right of any contract holder to seek any and all remedies otherwise available for the violation of the 1982 act or for breach of the contract. It is the manager's intention that section 101(f) preserve all of those rights, regardless of whether the same or a similar obligation is expressed in the Nuclear Waste Policy Act of 1996.

Mr. LEVIN. With respect to a deadline imposed for the first time in the Nuclear Waste Policy Act of 1996, is it the manager's intention that section 101(g) proscribe a court order that the Secretary of Energy comply with such deadline, or granting relief other than money damages to contract holders?

Mr. MURKOWSKI. It is not the manager's intent that section 101(g) proscribe anything other than financial liability for failure to meet a deadline imposed by the Nuclear Waste Policy Act of 1996. To the extent other forms of relief are available for the government's failure to comply with a deadline imposed by the amendment, the manager does not intend that such a remedy be prohibited.

Mr. LEVIN. Is it the manager's intention that section 101(g) limit the liability of the United States for anything other than a failure to meet a

deadline? For instance, if the Nuclear Waste Policy Act of 1996 imposes an obligation which is not a deadline, such as the requirement to reimburse contract holders for transportable storage systems if DOE uses such systems as part of the integrated management system, is it the manager's intention that that obligation not constitute a financial liability of the United States?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the liability of the Federal Government for anything other than a deadline. The manager does not intend that any other obligation imposed by the Nuclear Waste Policy Act of 1996 be affected by section 101(g).

Mr. GLENN. Mr. President, when I first saw the Nuclear Waste Policy Act, S. 1271, I was very surprised at its apparent disregard to the rights of citizens and the protection of the environment. It appeared to me that proponents of that bill wanted to ignore those issues, all in the name of removing a burden from the nuclear industry. I can understand the desire to make the Federal Government live up to its promises, but not at the expense of the environment or citizen's rights.

The bill, as originally written, contained provisions for prohibiting the Environmental Protection Agency from performing its legislatively mandated function of defining standards for radiation releases from the permanent or interim radioactive waste repository. Congress established what appeared to be a limit which disregarded scientific and public input on appropriate limits. Particularly galling was the prohibition of public input and EPA involvement in standard setting.

Other issues of concern included: First, opening the door to reprocessing, called conditioning in the original bill; second, running rough-shod over the citizens of States through which the radioactive waste would be transported; and third, gutting Civil Service laws for a particular DOE office.

I filed several amendments, in an attempt to correct provisions of the bill that in my view would result in unfair treatment or inadequate protection of citizens and the environment. Several of those provisions have been corrected, or at least modified. I am pleased to see that, in the latest version of the bill, the EPA and the NRC have been brought back into the process, albeit somewhat awkwardly. These two agencies are charged with responsibilities for setting standards for protection of the public, workers, and the environment from produced radioactive materials, which includes those found in nuclear reactors or radioactive waste repositories.

I am very disturbed, however, with the legislatively imposed standard of 100 mrem per year to the average person in the vicinity of Yucca Mountain. I understood that EPA and NRC have

the responsibility and authority to establish radiation dose limits and standards. I certainly would not substitute my limited knowledge on the effects of exposure to radioactive materials, for that of the EPA and NRC. I doubt if there are any others in this Chamber who would be qualified to do that, either. We should leave it to the experts, at EPA and NRC, as well as to the public, instead of imposing an arbitrary standard of our own. It is claimed that EPA and NRC have veto rights in this bill. However, the bill's wording is such, that instead of giving the agencies the responsibility for establishing a standard, they are required to adhere to our standard, unless they determine that our standard constitutes an "unreasonable risk to health and safety." What constitutes "unreasonable risk"? How will EPA or NRC determine what is "reasonable" and what isn't in terms of risk? That is a subjective judgment, and it is an invitation to extensive litigation on that judgment. At the same time, the bill limits judicial review of rulemaking based on the 100 mrem standard.

I am also concerned that our limit is significantly higher than limits imposed for other nuclear activities. Why is this so? Is it because someone has been told that we can't design a repository to tougher standards? Is this what health and safety regulation has come to? Don't set a standard that the National Academy of Sciences suggests you should set—their report suggests a much lower number than 100 mrem/yr. for exposure—instead let's pick one that the engineers say they can easily meet today—despite the fact that the repository will be around, maybe, for thousands of years.

I understand that there is disagreement among scientists about the effects of low-level radiation. The EPA sets a limit of 25 mrem, and the NRC has historically set 25 mrem around nuclear power plants. International standards setting bodies have also allowed dose limits for waste storage of 15 to 25 percent of the 100 mrem total limit.

The EPA has also opposed the legislatively mandated limit, in letters to Senate Committees and individual Senators. I have also been informed that EPA is going to issue their dose limits in the very near future. [Draft within a month.] I want to know what they say in this regard before I set a congressionally imposed limit, which may or may not meet our best scientific judgment.

Beyond this, Mr. President, the philosophy behind this bill is one that is seriously questionable. The bill presumes that a permanent deep geologic burial site of nuclear waste is the most suitable solution to the waste problem and then sets up a structure that will inevitably lead to pressures to make the interim site the site of the perma-

nent facility, and with legislated safety standards for the permanent repository.

I simply do not believe that we now have the technology or engineering knowledge to credibly design and construct a permanent repository that can meet acceptable safety standards for tens of thousands of years. If we did have this ability and understanding, then it would not be necessary to contort our environmental laws and regulatory oversight as this bill does. Until we get closer to being able to design and construct a repository with appropriate safety standards, there is no reason why we cannot continue to have monitored retrievable surface storage of these dangerous materials. The level of risk is not greater than that posed by the construction of a central interim facility requiring continuing transportation of radioactive materials from all over the country. Accordingly, Mr. President, I am opposed to the passage of this bill.

Mr. KERREY. Mr. President, I would like to take this opportunity to explain my opposition to S. 1936. We can, and we must, seek a responsible and permanent solution to the important problem of high-level nuclear waste storage. In that light, I have supported, and will continue to support, a permanent geologic repository. What I do not support is designating the location of an interim storage site before we have determined the viability of the Yucca Mountain permanent repository. I have three major objections to that policy.

First, it exerts a growing pressure to name Yucca Mountain as a permanent repository. The pressure to move nuclear waste to Yucca Mountain continues to increase. The premature decision to authorize the storage of tens of thousands of metric tons of nuclear waste at the site only adds to the pressure to push blindly down this course. The American people need to be confident that the final decisions regarding the permanent repository are based on sound science and not political expediency. The American people deserve a credible, deliberative policymaking process. They must have faith that the location of the permanent repository is based on a fair and balanced consideration of environmental, health and safety issues. Mandating the location of a interim site at this time undermines the public confidence in this process.

My second concern is that the interim site may become the de facto permanent site. If for either scientific or political reasons, the work on the construction of the permanent repository stops, who will be motivated to move the waste from temporary storage in Nevada to a permanent repository in another State? The nuclear waste at the interim site will, at that point, be of concern to very few. Those who were responsible for generating



that waste will have no moral, legal, or financial responsibility for that waste. I submit that the policy options available at that time will be rather limited.

This brings me to my third, and most important, concern. If, despite the inertia at work, another site for a permanent repository were named, it would set up an unacceptable situation. We would have moved the waste from Yucca Mountain to another, yet to be named, location. Nebraska is a major corridor to Yucca Mountain. Under no circumstances will I vote for a bill that sets up the possibility of the Nation's nuclear waste passing through my State twice. Simply stated, it is unnecessary to subject the public to the risk and expense of transporting this waste twice.

That summarizes the irony of S. 1936, regardless of what the final disposition of the permanent repository at Yucca Mountain, we have erred. If Yucca Mountain is found to be a viable location, we have unnecessarily undermined the credibility of the scientific studies. If Yucca Mountain is not a viable site, we are given a no-win situation. We either allow the interim site to become the de facto permanent site or we once again move high-level nuclear waste to another location.

Why does the Senate chose this road with no winning outcomes? Are we reacting to a crisis that does not exist? For years the operators of commercial nuclear power plants have stated that on-site storage was safe. All evidence supports this position, and I believe them. Current on-site storage is not a permanent solution, but by the same token, it does not present a crisis.

The alternative to the no-win course outlined in S. 1936 is quite simple. We wait until the completion of the viability study at Yucca Mountain in 1998. At that time we can consider the policy options available based on sound science and hard evidence. We will not have locked ourselves into narrow policy options or have undermined the credibility of the process through premature decision making. The geologic repository will be designed to store high-level nuclear waste for 10,000 years. Yet, this body can not wait 2 years to base public policy decisions on sound science and a credible process.

Mrs. MURRAY. Mr. President, I intend to support S. 1936, as amended. However, I would also like to express my reservations about portions of this bill.

I supported cloture and I appreciate my colleagues from Nevada agreeing to allow this bill to move forward. It is critical that we proceed with the business we have to complete prior to adjournment; namely, 13 appropriations bills. I hold no grudges against my sincere colleagues from Nevada for their use of Senate rules to delay this bill. Were I in their shoes, I too would likely use every parliamentary device

available to me to prevent enactment of this bill.

It is because I do not want to be in their shoes that I support this bill. I, and many of my constituents, are concerned that there may be a renewed effort to place either an interim or a permanent nuclear waste repository in Washington, at Hanford, adjacent to the Columbia River. As many who have dealt with this issue over the years know, Hanford, a Texas site, and Yucca Mountain were the winners in the permanent repository selection process. So, for the health of my constituents, I support development of Yucca Mountain.

Conversely, it is also that fear for my constituents that makes me most nervous about S. 1936. While I appreciate the improvements made about Environmental Protection Agency authority regarding radiation release and exposure standards, I am worried about the bill's easing of some environmental and health standards. It is not unlikely that someday we in Washington may have the rest of the Nation decide that Hanford radiation standards could be lessened in order to foist some new batch of nuclear waste upon us. So, I am leery of such provisions in this bill and am pleased that the authors continue to make improvements.

I also am frustrated that the U.S. Government has made a commitment to some of its citizens, to ratepayers, to the nuclear industry, to store nuclear waste by 1998. Maybe we should not have made such a commitment or collected fees to follow through on that commitment. But we did. It is time to act on that commitment—even if it means so doing with this imperfect vehicle.

Mr. President, this is a very difficult issue for me. I care about my State, I care about the ratepayers' money being spent on this never-ending project to get nuclear waste in a permanent geologic repository, I care about the health of all people, including Nevadans, and I care about fairness. I agree with many of the arguments made by my colleagues, Senators BRYAN and REID. Therefore, I will support any amendments that address my concerns. In the end though, I will support S. 1936 in its final form.

Ms. MOSELEY-BRAUN. Mr. President, on balance, I support S. 1936. It is not a perfect bill, but it is a reasonable bill, and I do not believe that the United States can afford further, indefinite delays.

The decision before the Senate is, in part, about the suitability of Yucca Mountain, the risks associated with the transportation of spent nuclear fuel, and the legacy of spent nuclear fuel created by our nuclear industry.

The issues that flow from a decision to open an interim facility near Yucca Mountain, however, are as important as the site decision itself. My own

State of Illinois, with 13 reactors, has more nuclear plants than any other State. For 36 years, waste has been building up, and the volume continues to grow. With our excellent network of highways and railways, Illinois also faces issues associated with interstate shipments of spent fuel destined for a permanent repository.

There will never be a perfect disposal site for spent nuclear fuel. The fuel is dangerously radioactive, and remains so for hundreds of thousands of years. Whether it is placed in deep geologic storage, sunk beneath the ocean, drilled far into the earth, or shot it into space, every approach poses risks to humans and the environment, and none will ever completely eliminate the dangers of this substance.

Without a perfect solution, however, we are forced to choose the next best option: A location where the waste will have the least potential adverse impact on human health. Ideally, such a site is in an unpopulated area, away from threats to underground water, away from animal habitats, and in a place where it poses the least environmental risk and where we are assured of maximum security protection.

Illinois, home to over 11 million people, is not such a site. Yet, over 5,000 tons of spent fuel are housed at temporary locations scattered throughout my State. Most of these locations are in northern Illinois, near great concentrations of people. The fuel rods are stored in underwater pools, a method never meant to be permanent. While the pools pose no imminent risk, and will likely remain safe for the foreseeable future, they do not ensure complete safety, maximum security, or long-term protection of the environment. And the volume of waste at these sites will continue to accumulate as spent fuel is removed from nuclear plants.

For Illinois, there are no perfect answers, there are only options, and each option has its problems. If a Western waste disposal site is opened, Illinois, because of its key role in our national transportation system, faces a future of literally thousands of shipments of nuclear waste across the State. The other alternative is even less palatable—keeping large amounts of deadly waste at Illinois nuclear power plants for perhaps 100 years and beyond, in facilities never designed for long-term safety and security, located too close to people, too close to groundwater, and quite frankly, too close for comfort.

My conclusion is that spent nuclear fuel cannot remain in Illinois. Illinois is not suitable for the medium and long-term storage of nuclear waste, and should not have to risk inadvertently becoming a de facto permanent site because Congress fails to act.

Congress has debated this issue for 14 years. Illinois ratepayers have paid

more than \$1.5 billion to help finance the construction of a permanent disposal site in Yucca Mountain. Despite the billions received, the Federal Government has made little progress, and Yucca Mountain is not expected to open until 2010 or later. Meanwhile, space runs out in Illinois beginning in 2001. If Congress fails to act, utilities will be required to build additional storage space at reactor sites, and ratepayers will foot the bill, essentially paying twice for the storage of this waste.

I am concerned about transportation. While I have been assured by the city of Chicago and the Illinois Department of Nuclear Safety, both of which have excellent hazardous waste transportation programs, that spent fuel shipments pose no risk to the general public, we must remain as vigilant as possible on this issue.

These fuel shipments must be handled in a manner that meets the highest safety standards and does not put Illinoisans or other Americans at risk. That's why I offered an amendment to this bill that would hold the Department of Energy and the Department of Transportation accountable for these shipments, and directs the Department of Energy to select routes that avoid heavily populated areas and environmentally sensitive areas. I thank the chairman and ranking member of the committee for accepting these amendments. I do believe, however, that more should be done to further improve transportation safety, and I hope Congress will revisit this issue in the very near future.

It is worth remembering that if this bill is enacted this year, there will be no immediate cross-country exodus of spent fuel. The Nuclear Waste Technical Review Board recognizes that "even if passed into law now, none of the proposals before Congress would enable the operations of a centralized facility before 2002." Additionally, the process of licensing and developing a large interim facility, and the transportation infrastructure that goes with it, has been estimated to take 5 to 7 years. Furthermore, it is not expected that the Department of Energy will meet several deadlines in this bill.

Even if S. 1936 is promptly enacted, spent fuel will remain where it is for quite some time. Each decade of delay, however, adds 20,000 metric tons to storage capacity. Beyond 2020, nearly 85,000 metric tons of spent fuel will have been generated. And that is exactly why the Nuclear Waste Technical Review Board recommends that action must begin now on a Federal facility, so that full scale operations can begin by 2010 when reactors begin shutting down in large numbers.

Mr. President, this debate is not about whether nuclear power should ever have been pursued as an energy option. That has long since been de-

cided. We cannot wave the magic wand, nor turn back the clock. Nuclear power is here, and nuclear waste must be dealt with.

Our decision on dealing with nuclear waste will never be perfect, because it cannot be perfect. But, it is a decision that must be made. If we fail to act, Congress will send a message to the American people that the nuclear waste problems created by our generation are best resolved, and best financed, by our children and our grandchildren. That is neither right, nor fair, and that is why I am voting in favor of S. 1936. I urge my colleagues to do likewise.

#### NUCLEAR WASTE AND THE BUDGET

Mr. DOMENICI. Mr. President, I want to take a moment to congratulate the senior senator from Idaho, the chairman and ranking minority member of the Senate Energy and Natural Resources Committee and the majority leader on this bill. All of these Senators deserve a great deal of credit for getting this controversial bill pulled together and scheduled for Senate action in a year when the calendar is working against us. I also want to congratulate the Senators from Nevada. This is a difficult issue. I may disagree with them, but I respect the effort and vigor they have put into their opposition to this bill.

The Nuclear Waste Policy Act required electric utilities to contract with the Department of Energy to take title and ultimately dispose of nuclear waste generated by these utilities in exchange for a fee on nuclear-generated electricity. The Department of Energy's view is that they do not have obligation to take this waste until the development of an operational interim storage facility or a permanent repository.

The Clinton administration has shown incredible bad faith on its part to honor these contracts. While the administration has argued that there is no obligation to take the waste in 1998, it continues to collect fees from electric utilities pursuant to its contracts with these utilities. The Clinton administration has threatened to veto legislation, last year during consideration of the Energy and Water Development Appropriations bill and this year during consideration of this legislation, providing an interim storage facility that would provide DOE with the means to meet its contractual responsibilities while a permanent repository is being developed. Although the administration has professed support for development of a permanent repository, the President has not provided the leadership necessary to gain the funding or the changes in the law that will be necessary to ensure an operational disposal facility will be developed. For example, in his most recent budget request, the President proposed to reduce spending for the nuclear waste program over the next 6 years.

When DOE indicated it would not accept responsibility for the utilities' nuclear waste in 1998, the electric utility industry took them to court. The United States Federal Court of Appeals for the D.C. Circuit recently sided with the utilities on the question of the Federal Government's obligation and concluded that the Federal Government has an obligation to accept title for this waste in 1998 that is reciprocal to the utilities' obligation to pay. The court clearly rejected DOE's argument that its obligation was contingent on the development of an interim or permanent repository.

S. 1936 will allow the Federal Government to honor that commitment. It provides for an interim storage facility to meet the Federal Government's commitment to take this waste and sets forth a process that will allow the Federal Government to study, evaluate, and develop a safe and environmentally-sound permanent repository for nuclear waste.

Earlier versions of this legislation included provisions that would have violated the Budget Act. Senators CRAIG, MURKOWSKI, and JOHNSTON have written a bill that does not violate the Budget Act. It is fully paid for over the 10-year period as required by the Act. The bill, however, will result in a \$600 million annual increase in direct spending and the deficit beginning in 2003. This direct spending would be available to fund program management, interim storage, transportation, and development of a permanent repository. It pays for this increased spending over the 10-year period by accelerating the payment of fees by electric utilities. Although the bill does not technically violate the pay-as-you-go rule over the 10-year period, it meets this requirement by shifting future payments by utilities into the 10-year budget window.

This bill provides direct spending authority that will be available to fund all aspects of the nuclear waste disposal program. I understand the very strong arguments for this spending authority, but as Budget Committee chairman I am constantly confronted with very compelling arguments on why we should increase spending for numerous programs.

In this instance, particularly considering the Appeals Court's decision, clearly the Federal Government has an obligation to take title to this waste in 1998. DOE's argument was that it had no obligation because no disposal facility was available. The Court discarded this view and interpreted disposal to be a very broad term that included temporary storage of nuclear waste.

Viewing the tremendous effort that went into getting an agreement for consideration of this bill, I decided not to pursue an amendment that would have limited the increase in direct spending to what is needed to develop



an interim storage facility. If this legislation is not enacted, I intend to pursue modifications to this legislation to limit the increase in direct spending to what is necessary to provide for the interim storage of this waste. I think a very strong case can be made that the Government has a binding contractual obligation to provide for the interim storage of this waste and that is clearly supported by the court's opinion.

Mr. ROCKEFELLER. Mr. President, I oppose the Nuclear Waste Policy Act, and I would like to share some of my reasons with my colleagues.

First, the Senate should not be ramming through a bill to designate an interim storage site just when a comprehensive, sophisticated process is well underway to come up with a permanent site or solution. This legislation basically says the Senate knows better—it says the Senate should take the place of scientists and experts, choosing Nevada as the so-called interim site and presumably paving the way for the same location to be used forever.

I do not think this is the time whatsoever for the Senate to make this decision—it's a misuse of power, it contradicts other policies that Congress has put on the books, and it could trigger all kinds of unfortunate consequences, including the possibility of a very serious accident.

This bill, S. 1936, violates current law, the 1987 Nuclear Waste Policy Act amendments. Under the 1987 law, DOE is not allowed to begin construction of an interim storage facility until the NRC has granted a construction license for the permanent site. Also, that law stated that no more than 10,000 metric tons of waste could be stored at the interim site before the permanent site began operating, and no more than 15,000 metric tons after that. But S. 1936 authorizes an interim site storage capacity far greater than either of these levels—40,000 metric tons after phase two, which will be increased to 60,000 metric tons if Yucca Mountain falls behind schedule.

In 1987, Congress was saying that it would be unwise to ship nuclear waste across the country to a temporary above-ground storage site until a permanent site gets built. The same is true now. It still isn't smart. But, under this bill, the waste would be shipped to the Nevada interim storage site anyway, before the studies have been completed to certify whether or not Yucca Mountain is the place to be a permanent repository of nuclear waste.

Some say this isn't true, that there is a safeguard in the bill. But, while the bill requires DOE to stop construction on the interim site if the President determines that Yucca Mountain is unsuitable as the permanent repository, there's a catch. If Yucca Mountain isn't found suitable, the bill will re-

quire that the interim site be built in Nevada anyway unless the President picks an alternative site within 18 months. This alternate site must then also be approved by Congress within 2 years after that. Leaving aside the idea that we should designate nuclear waste sites on objective criteria rather than strict timetables, does anybody believe another site will be found in 18 months? Or that Congress will approve another site 2 years after that? I'm not betting on it.

Why all this pressure to act on the bill before us, S. 1936? From everything I have seen, there is no overwhelming case, for safety or related reasons, to force the transportation and placement of this waste into an interim site. The nonpartisan Nuclear Waste Technical Review Board issued a report saying that there is no compelling technical or safety reason to move spent fuel to a centralized facility for the next few years. And the Nuclear Regulatory Commission has said that the waste could safely remain at the current sites for far longer than that in dry cask storage facilities. In short, this waste doesn't have to be moved now.

In fact, it is even conceivable that science may ultimately lead to the rejection of a single repository, because of the dangers of transporting waste and progress being made in developing alternatives. The Senate should not be intervening, singling out Nevada, and short-circuiting what could be a safer, sounder, and less costly solution.

And there are a number of safety concerns that argue against this bill. Experts have raised concerns about the radiation exposure standard in this bill, and I think we should question the preemption of several key environmental laws, such as the Clean Water Act and the National Environmental Policy Act.

Transportation of this waste also is a major concern, and reason enough to reject this legislation. If the plan in this bill goes forward, we will see the transport of up to 60,000 tons of nuclear waste by road and rail from nuclear facilities around the Nation to this interim storage site. These mobile nuclear waste sites will travel through West Virginia and 42 other States. I have been told that 50 million people live within 1 mile of the proposed transportation routes that would be used.

In West Virginia, we have no nuclear facilities. We have no spent fuel. We have no nuclear waste. And we have no storage problem. But, under this bill, West Virginians will have nuclear waste being shipped through the State. I do not want to be alarmist, but I do have concerns that West Virginia and the other 42 States have not had adequate time to develop the necessary transportation safety plans, and are not ready to handle the possible accidents that may occur. I don't know

how many of my colleagues have spent time in southern West Virginia, but the mountains and roads there will not be friendly to rescue efforts if one of these trains goes off the tracks. Under this bill, the zeal of some to force this premature interim storage facility into Nevada may raise risks for protecting the people and the environment in places like West Virginia.

Mr. President, this is an unnecessary bill that forces Nevada to prematurely take the Nation's nuclear waste and become America's so-called interim storage site. It looks like a set-up to becoming the permanent storage facility, not as a result of the promised objective and scientific process, but as a result of political pressure and an eagerness to dump a problem onto a lone State. It uses a radiation exposure standard that looks questionable and undermines environmental laws in ways that could be dangerous. It threatens to expose millions of Americans to the risks of transporting and storing this waste.

The Senate has no business passing this bill. The President has made it clear he will veto the bill, wisely insisting on the completion of the kind of process that should be used to make decisions as monumental as where, when, and how to transport and locate nuclear waste. The Senate should defer to that process as well, and resist this idea of singling out one State in such an insensitive and heavy-handed manner.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I wonder if my colleague from Alaska and my colleagues from Nevada will listen to a question, which is, as I understand it, the plan now is to go to third reading immediately and vote on final passage at 4:55?

Mr. MURKOWSKI. Mr. President, in response to my colleague from Louisiana, that is the plan that has been agreed to.

Mr. REID. It is my understanding there will be general debate until that time, that we each have an amendment left, and it is my understanding neither the proponents of the legislation nor the opponents of the legislation are going to offer the last amendments they have in order, and that the time will be evenly divided between now and 4:55 for general debate on the legislation.

Mr. MURKOWSKI. That is my understanding, Mr. President.

Mr. JOHNSTON. I wonder if we can advance that by unanimous consent.

Mr. President, if it is in order and agreeable with my colleague from Alaska, I ask unanimous consent that we move immediately to third reading, and that the time between now and 4:55 for final passage be equally divided between the Senator from Alaska and the senior Senator from Nevada.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. I thank the Chair. The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I wonder if I may have the Chair identify the time that will be divided on either side.

The PRESIDING OFFICER. The Senator from Alaska has 30 minutes; the Senator from Nevada 31 minutes.

Mr. BRYAN. Mr. President, the Senate is not in order. I did not hear the inquiry of the Senator from Alaska.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order. I ask that all audible conversations be removed to the Cloakroom.

The Chair recognizes the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, as I understand it—I was distracted as well—we have about 30 minutes.

The PRESIDING OFFICER. The Senator from Alaska has just over 30 minutes.

Mr. MURKOWSKI. I thank the Chair. I inquire among Senators on this side as to how much time they need. I think the Senator from Wyoming requests time. How much time does he need?

Mr. SIMPSON. Mr. President, I think 5 to 7 minutes will be quite adequate.

Mr. MURKOWSKI. The Senator from Idaho, I know, is going to request time, 10 or 15. The Senator from Louisiana. I am going to yield myself 5 minutes at this time, and I will attempt to accommodate—why don't I just go ahead with the Senator from Wyoming now and allot him 5 minutes. I yield 5 minutes to my good friend, the Senator from Wyoming, who, unfortunately, will be departing this body at some point in time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I do richly commend my friend, Senator MURKOWSKI. I have watched him doggedly work in this area. There are many who have done so much in this area over the years: Senator JOHNSTON from Louisiana; I was involved with it as chairman of the Subcommittee on Nuclear Regulations; Senator Gary Hart, and back through the years.

The problem with nuclear waste storage is a most serious and complex one. I cannot tell you how tired I am of the people on both sides who are extremists in the area; those who are the "Hell, no, we won't glow" group and

the "nobody's ever been killed" group. Somewhere between those two groups is sanity.

I think we are finally on the track of doing something sensible. The mere mention of nuclear waste sends shivers up the spine of many people. I discovered that when I came to the Senate and joined the Nuclear Regulatory Subcommittee. That is what happens when one utters, "All right, I'll take an assignment no one else wants." I did that a couple of times, and I got Immigration and Nuclear Regulations and Veterans Affairs, so cursed with business three times in some ways. I have enjoyed those issues, but they are filled with emotion, fear, guilt and racism, all three of them.

So here we have this entire issue that has been a continuing victim of gross misinformation, reprehensible scare tactics, particularly in the 17 years since Three Mile Island, and certainly people deserve to know more of exactly what we are dealing with.

The waste products resulting from many good and beneficial uses of nuclear elements are not just going to go away. It is a little late for protesters just to run around the streets with signs saying, "Don't put it here, don't put it there."

Wastes of varying levels of activities are piling up at thousands of sites across this country from sources like universities, nuclear powerplants, vital medical procedures conducted at hospitals and even dismantled Soviet missiles. Much of this waste is sitting—sitting—in or near highly populated areas which face potential threats with regard to earthquake, tornado, and hurricanes.

The specific problem the bill addresses is the disposal of high-level nuclear waste from powerplants, the spent-fuel rods that are left over after years of generating electricity. Back in 1982—incidentally, the same year Cal Ripken's playing streak started—Congress passed the law. I was involved in that. In essence, it said we will make a deal with the nuclear power consumers in this country. We said the Federal Government would provide a place for storing the spent-fuel rods, but the consumers had to pay for it.

Since that law has passed, those fees, plus interest, have provided \$11 billion; \$6 billion has already been spent, some of it for unrelated purposes, and still construction of the disposal site has not even started.

We are running out of time. No more time for placards, no more time for running through the streets, no more time for standing out on the highway, because here is where we are: There are 109 active commercial powerplants in 35 States providing 20 percent of the country's electricity. For the most part, the spent-fuel rods produced in those facilities are there on site in pools under 30 feet of demineralized

water. If the water were to drain away for any reason because of some structural defect from natural disaster, the rods would reheat and eventually melt down. These pools were never designed for long-term storage. Yet, because of the strength of the political opposition to a permanent site—I can understand all the reasons—we run the risk of jeopardizing the health of millions of Americans. A typical nuclear powerplant produces 30 tons of spent fuel.

The PRESIDING OFFICER. The Chair advises the Senator that his 5 minutes have expired.

Mr. SIMPSON. I ask for an additional 2 minutes.

The PRESIDING OFFICER. The Senator will proceed.

Mr. SIMPSON. A typical nuclear powerplant produces 30 tons of spent fuel every year. Right now more than 30,000 metric tons of spent fuel are being stored at 75 sites across this country. And 23 reactors will run out of room in their storage pools by 1998. By 2010, a total of 78 reactors will be out of storage space for their spent fuel and have about 45,000 tons of metric tons of spent fuel.

It is very important we get the waste out of these inappropriate and unsafe locations into a technologically sound, permanent storage site. It is also very important for every person in this country to realize that it is perfectly possible and technically feasible to transport and store this waste with very little risk to human health or the environment.

I point out the Department of Energy has been transporting nuclear waste from the weapons facilities under its jurisdictions for 30 years without a single incident of environmental or human harm.

It is crucial to get on with the business and get on with the work of an efficient and safe system for civilian nuclear waste before the risks we have been dodging with our current haphazard setups catch up with us.

I applaud the work of Senators MURKOWSKI and CRAIG and JOHNSTON, their bipartisan effort through the years. They have a realistic piece of legislation which finally allows the Federal Government to live up to its commitment to provide a safe, secure, and centralized location for the storage of the most radioactive of the nuclear waste. It also provides the money and Federal assistance for training State and local personnel in safety and emergency procedures. It is a very important bill and a good compromise, and good work all around. I am very pleased to support it and encourage my colleagues to do the same. I thank very much the Senator from Alaska.

Mr. MURKOWSKI. Madam President, I believe the other side wants to speak. I retain the remainder of our time.

Mr. BRYAN addressed the Chair. The PRESIDING OFFICER (Mrs. FRAHM). The Senator from Nevada.



Mr. BRYAN. Madam President, how much time remains under the control of the Senator from Nevada?

The PRESIDING OFFICER. The Senator from Nevada has 30 minutes.

Mr. BRYAN. I thank the Chair. I, at this point, will allocate myself 10 minutes of that time and ask the Chair to inform me when I have used that.

Madam President, it has been a number of weeks we have been discussing the high-level nuclear waste issue. And I think it is time to put this into some perspective.

In 1980, some 16 years ago, debate on the floor of the Senate indicated that there was a great urgency and immediacy to take action, that there was a crisis, that indeed, if nothing were done, if we did not get the interim storage, what was called MRS storage, nuclear reactors around the country would have to shut down by 1983.

I offer that interesting piece of history as a footnote because the debate today is in almost identical respect the same debate that occurred this very week on July 28, 1980. This is a contrived and fabricated crisis.

Let me begin by pointing out what the Nuclear Waste Technical Review Board—this is a board that was created by act of Congress in 1987. And the Nuclear Waste Technical Review Board has concluded that there is no need for interim storage at this time. And that is a conclusion which they have endorsed. Anyone who has any question about it, this is the document. So all of this debate is at best premature and in our view totally unnecessary.

When you look at the substance of the legislation, what is occurring is an absolute travesty. The major environmental provisions that protected Americans with bipartisan support for more than 2 decades are simply wiped out, simply wiped out. We have just had a debate. The National Environmental Policy Act, designed to apply to circumstances such as this, for all intents and purposes, has been eviscerated by the nuclear utilities in their zeal to get interim storage.

Let me just cite two specific references. Among the things that the Environmental Policy Act would ordinarily consider would be the environmental impacts of the storage of spent fuel and high-level radioactive waste for the period of foreseeable danger—thousands of years. This piece of legislation would restrict the application of NEPA, the Environmental Policy Act, to the initial term of licensure of about 30 years.

Nothing has occurred to date that would establish a design criteria for such facility. Ordinarily the Environmental Policy Act would consider the alternatives to the design criteria. That is now wiped out. NEPA cannot consider design criteria, cannot consider the application for longer periods of time of health hazards. So we have a

major piece of environmental legislation wiped out.

Preemption. The amendment offered by our friends from the other side has put us in the situation in which all Federal laws that are inconsistent with this act are wiped out. And we have gone through a whole litany of them.

We have the National Environmental Policy Act, FLPMA, clean air, clean water, all of those, if they are inconsistent, they do not apply. So forget environmental laws when it comes to siting an interim storage. That is simply an outrage, Madam President, no matter how one feels about nuclear energy or whether one believes there ought to be some type of interim storage.

With respect to standards, nowhere in the world—nowhere—is a radioactive standard of 100 millirems established by statute—nowhere. And 100 millirems would be at least 24 times the standard for the safe drinking water, would be at least six times-plus the standard set for the WIPP facility. I must say, this is all laid out right here. So, 100 millirems.

Why in God's name, for the most dangerous stuff on the face of the Earth, would we mandate by statute a 100-millirem standard, and then say to the EPA, well, you know, if you can prove that that is unsafe, then you can change it. We do not do that. I mean, if this were a straight-up deal, if this were not some contrived wish list by the nuclear utilities, the EPA would be designated as finding a standard and establishing it. No other place in the world.

The National Academy of Sciences was asked in a piece of legislation approved in 1992—the energy bill—was asked to come back and make a report with respect to a standard. And what they said is that the safety standard, in terms of radioactive exposure—this is the "Technical Bases For Yucca Mountain Standards." This is the product of the National Academy of Sciences. And what they said is, it should be somewhere between 10 and 30 millirems.

How can you justify it? How can you justify that? And indeed when you look at the Environmental Protection Agency, here is what our Administrator tells us.

S. 1936 and the substitute amendments establish a Congressionally set overall performance standard of 100 millirems a year to the average person in the general vicinity of Yucca Mountain nuclear waste repository for 1000 years. Although the substitute amendments allow EPA to challenge the 100 millirem a year standard, EPA believes the standard is inappropriate because it is less protective than other U.S. standards and international advisory board recommendations for a single source. Furthermore . . . the actual risk to public health and the environment will occur well after 1,000 years. . . .

And the limitation that is imposed in this legislation applies only to 1,000 years.

So again, public health and safety be damned. Anything that helps the nuclear utilities, that is what we are going to buy into.

Madam President, that is just an absolutely indefensible matter of public policy. I must say that no other place in the world establishes such a standard. We are frequently cited to the international sanctioning bodies. And although 100 millirems is referenced in those standards, never is it referenced for single source.

It indicates here that most other countries have endorsed the principle of apportionment of the total allowed radiation dose. So no—no—standards that exist in the world, to the best of our knowledge, would propose 100 millirems from a single source.

Finally, on the standards issue, I must say, clearly what drives that decision, as well as every provision in this bill, is to make it easier to lower public health and safety standards, to make it less costly. And the public health, and the consequences of those persons, would be effectively by and large ignored.

My colleague is going to talk a good bit about transportation, but we are talking about 85,000 metric tons. We are talking about 16,000 shipments or more, traveling across the rail corridors in America, as well as our highway system, and 51 million Americans live within 1 mile of that. Each of those railroad casks weigh 125 tons, and the consequence of the hazardous cargo in terms of radioactivity would be the equivalent of 200 bombs dropped at Hiroshima. We are not just talking about Nevadans at risk. If you ship it by way of cask and highway cargo, you are talking about the equivalent of 40 bombs.

Finally, and we have tried to make this point albeit it is a difficult thing to explain, in effect this is a financial bailout of the nuclear power industry. Since the very enactment of the Nuclear Waste Policy Act of 1982, its fundamental premise has been that the utilities are the ones that get the profit, they are the ones that generate the waste, they have the financial responsibility. Through a series of significant changes, albeit somewhat subtle, a cap or a ceiling or a limitation is placed on the amount that the utilities will be required to contribute.

Now, to the year 2002, it is 1 mill based upon each kilowatt of power generated. After the year 2002, it will become no more than the amount of the appropriation each year. In 2003, we would be talking one-third of a mill, the balance all left to the taxpayer to pick up.

Madam President, I simply say, No. 1, this debate is unnecessary, this bill is unnecessary, and that comes from a body of eminent scientists impeded as a result of legislation enacted by this body. The National Environmental

Policy Act is, in effect, gutted as a consequence of the restrictions placed upon it. All other Federal environmental laws are preempted. The standards that are set are so high as to constitute a clear and present danger to public health and safety. The Environmental Protection Agency agrees, as do others.

Ultimately the taxpayer, not the utility, will pick up the bill if this bill becomes law.

I reserve the remainder of my time.

Mr. MURKOWSKI. I yield 6 minutes to my friend from Louisiana.

Mr. JOHNSTON. Mr. President, in the original form of our bill, we provided for 100 millirem radioactivity limit from the repository. However, because our friends from Nevada stated the EPA should have a role here, we amended that. The present bill now on third reading provides, if EPA finds that the 100 millirem would not be consistent with health or safety, they may set it at another level and, indeed, whatever they would set under the Administrative Procedure Act would be final unless that level is arbitrary and capricious.

Madam President, we have provided here for the role of EPA to make the health and safety determination. Why did we set it at 100 millirems to begin with? Because that is the level set by the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the U.S. Nuclear Regulatory Commission, and indeed the EPA in its radiation protection guidance for exposure of the general public, 1994, as well as the International Atomic Agency.

Beyond that, the 100 millirems is a commonsense level because there is more than 100 millirems difference in the natural exposure of someone in Washington, DC, which is about 345 millirems, and Montana, Wyoming, or Colorado, where the average exposure exceeds 450 millirems, so that if you live in an average place in the United States or if you live in Washington, DC, you would get a higher exposure by flying to Denver, CO, or Butte, MT, Cody, WY, or you name it, and living there than living here.

I remind my colleagues, Madam President, there has never been the slightest warning of EPA or of any nuclear radiation body to say it is dangerous to live in one of those mountain States where the millirem activity per year exceeds what we provide in this bill. If EPA should so decide, they may set the standard elsewhere.

Madam President, Nevada is the right choice. Nevada is one of the most remote places on Earth, Yucca Mountain. It is one of the driest places on Earth, and, Madam President, that area has been polluted by over 500 nuclear tests which have been not sealed off from the environment. Those nuclear tests have provided all of the ra-

diation byproducts that are contained in nuclear waste, including cesium 137, iodine 131, strontium 90, americium 243, technetium 99, plutonium 241. You name it, if it is in nuclear waste, it is contained already in the Nevada test site.

Need I remind my colleagues that our two colleagues from Nevada have been steadfast in wanting not less tests but more tests at the Nevada test site. Those tests have not been sealed off from the environment. Indeed, some of those tests have been right in the water table.

What is the defense of my colleague from Nevada when we say, how could you on the one hand want nuclear bomb tests and on the other hand not want these rods which are in canisters, and those canisters are nonleak canisters that I believe would be valid and provide protection for 10,000 years? The answer is, well, they are only 1 ton. I guess that is somewhere between 2,000 and, if you use a long ton, 2,200 pounds of nuclear material.

Now, Madam President, a ton of radioactive material not sealed off from the environment is many thousands of times what you would expect in any leakage which might occur thousands of years from now from one of these containers. The containers designed to hold these nuclear waste rods are designed to last hundreds and thousands of years. We would imagine they would last, frankly, 10,000 years. That has not been proved. I do not state that as a fact. That is what we speculate. But, certainly, hundreds of years without any leakage whatever. Yet the Nevada test site now already has 1 ton of all these radioactive products which are not sealed off from the water supply, not sealed off from the ground around it, but where unprotected blasts took place in the ground.

Madam President, if there is ever a place in the country to store the nuclear waste, it is adjacent to that Nevada test site. That is why, Madam President, the Congress chose in 1987 Yucca Mountain. That is why it is the right place to store this waste today.

Mr. MURKOWSKI. Madam President, how much time is remaining on this side?

The PRESIDING OFFICER. The Senator has 16 minutes, and the other side has 19 minutes.

Mr. REID. Madam President, the Senator from Louisiana is a brilliant man. He knows all the procedures here. He certainly knows basic mathematics. Basic mathematics indicates that 1 ton in the ground, spread out over a significant distance under the ground, is certainly much different than 70,000 tons stacked on top of the ground—significantly different. So we need to hear no more, I believe, about the Nevada test site.

Madam President, S. 1936 guts the existing law of its environmental safety

provisions and forces the Federal Government to take responsibility for the waste and liabilities of the nuclear power industry. The nuclear power industry has been extremely clever in spending their money to generate this argument, because they recognize that the nuclear power facilities don't last forever. In fact, most are being phased out right now. They want no responsibility for the garbage they have generated. They want to shift the ball to the Federal Government. That is what this legislation is about. It is also about corporate welfare at its very, very worst. It will needlessly expose people across America to the risk of nuclear accidents.

S. 1936 is proposed because the nuclear industry wants to transfer the risk and responsibilities and their legitimate business expenses to the American taxpayer. The interim storage facility is not needed. In accordance with the charter of the Nuclear Waste Technical Review Board, in March of this year, I repeat, it found no compelling safety or technical reason to accelerate the centralization of spent nuclear fuel. Implementation of dry cask storage at generator sites is feasible, cheap, and relatively safe.

We have talked at great length, and will talk some more, about how unsafe it is to transport this product around the country. There is no need to do that; it is safe where it is. It will be even safer with dry cask storage. If it is properly implemented—and that is fairly easy to do—the investment will double its return by storing the material in certified multipurpose canisters so the material is ready for shipment at some later time.

Operating costs for onsite dry cask storage, according to Mr. Dreyfuss' office, amounts to only about \$1 million per year per site. Capital costs for onsite storage include preparation of placement site and canisterization of spent fuel. Storing spent fuel in multipurpose canisters means that the marginal onsite capitalization costs are only a few million dollars. Implementing onsite storage at all sites needing some additional storage space, would require less than \$60 million for capitalization and less than \$30 million per year for their operation. This is compared to the multibillions of dollars they are talking about for interim storage. So onsite storage could be maintained for about 40 years before equalling the construction cost of interim storage at the test site, as estimated by the sponsors of this bill. There is simply no compelling need to rush into centralized interim storage. It is simply wrong.

Madam President, we have talked about terrorism. We talked about it because it is something we should talk about. I referred, briefly, at the end of the last amendment that was offered, to a statement that we received, without solicitation, from the Blue Ridge



Environmental Defense League, located in North Carolina. The letter says a number of things. We have admitted it into the RECORD. Let me refer specifically to some of the things contained in this extremely important communication.

These shipments of nuclear waste cannot be kept secret so long as we live in a free society. And we do.

Our actions were peaceful—

Peaceful following around these nuclear waste shipments.

—but we proved that determined individuals on a shoestring budget—

Not paid for by terrorists with huge amounts of money, because some terrorist groups are supported by foreign governments.

—can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta, the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

They go on to say that their work is in North Carolina, Tennessee, and Virginia. They have determined that the emergency management personnel in these areas are dedicated volunteers, but they are unprepared for nuclear waste.

Volunteer fire departments in rural counties are very good at putting out house fires and brush fires—

And the person writing this letter knows that because he has worked in these volunteer fire departments. They say, among other things:

The remote river valleys and steep grades of Appalachia are legendary. In Saluda, North Carolina, the steepest standard gauge mainline railroad grade in the United States drops 253 feet per mile, 4.8 percent grade. The CSX and Norfolk Southern Lines trace the French Broad River Valley and the Nolchucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern Railroad crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high-level nuclear waste as soon as 1998 according to S. 1936.

They say:

When we asked [the emergency response teams in North Carolina about their readiness to respond to a nuclear transport accident, they answered professionally, saying, "We'll just go out there and keep people away until State or Federal officials arrive."

Well, another western North Carolina coordinator said:

There is no response team anywhere in this part of the State, and, for the foreseeable future, there is no money in local budgets to equip us with any first response to radioactive spills.

In closing, Louis Zeller tells us:

I am asking you to oppose this expensive and dangerous legislation which would place an unfair and unnecessary financial burden

on communities and which would place at risk the health and safety of millions of American citizens.

Madam President, this legislation is unnecessary. It opens the doors to added terrorism, and it only further frightens our communities. Madam President, the President of the United States and others in the Federal Government have stated they oppose this legislation. We have a letter from the Director of the Department of Energy, a Cabinet-level officer. She should know about nuclear waste; she worked in the nuclear industry previously. She says, without equivocation, that this is bad legislation. "The bill does not solve," she says, "a fundamental problem posed by the Indiana-Michigan Power Company case, namely, that the Department must begin to dispose of nuclear waste. Instead, the bill threatens to repeat the same mistakes made in the past." She goes on to say other things, but basically that this is bad legislation.

Hazel O'Leary and I have not always been on the same side of the debates. She is someone who is head of the Department of Energy, a Cabinet-level officer, formerly in the nuclear industry, and she says this is bad legislation. Also, our head of the department that oversees environmental laws, Carol BROWNER, has written a letter dated last night saying, "I am writing to inform you that the Environmental Protection Agency opposes this legislation, S. 1936, and all the amendments. S. 1936 and the substitute amendment are a concern to the EPA because they limit consideration of public health and environmental standards in order to expedite the repository's opening. EPA is also concerned about the preemption. It takes away Federal laws."

Madam President, this legislation is a travesty. It has big bucks behind it. We have not had the opportunity to have people in chauffeur-driven limousines come and lobby Members of the Senate. We have not had the opportunity to have people stand in the halls and lobby against this legislation. We have a grassroots organization, like the people from the Blue Ridge Environmental Defense League, who stand up for what is right in this country.

What is right in this country is to oppose this legislation. It would curtail a broad range of health and safety laws, it would quadruple the allowable radiation standards for waste storage, and it would exacerbate the risk of transporting nuclear waste throughout the country. For these and many other reasons, I call upon my colleagues—I beg my colleagues—to vote against this legislation. It is the most antienvironmental legislation in this Congress, and to say that, you say it all.

I reserve the remainder of our time.

Mr. MURKOWSKI. It is our understanding that we have 16 minutes.

Mr. PRESSLER. Mr. President, I rise today to express my support for S. 1936, the Nuclear Waste Policy Act, and to congratulate my colleagues Senator FRANK MURKOWSKI, chairman of the Committee on Energy and Natural Resources, and Senator LARRY CRAIG, vice-chairman of the Subcommittee on Energy Research and Development, for all their hard work on this bill. I am proud to be a cosponsor of this legislation.

As chairman of the Committee on Commerce, Science, and Transportation, I have a particular interest in the transportation aspect of this legislation. Clearly, we will need a special transportation system to safely transfer nuclear waste to a centralized storage facility as mandated by S. 1936.

Already, there are some tough laws in place. Shipments of spent nuclear fuel and other commercial or defense-related high level radioactive waste must adhere to very strict standards before the waste can move on America's highways or railroads. S. 1936 will strengthen these standards.

It's important to point out that under the current regulation monitoring process, the Federal Government and the nuclear industry have transported thousands of shipments of nuclear waste without any release of radioactive material. That's an impeccable safety record. This legislation takes additional steps to maintain an already safe environment for the transportation and storage of spent nuclear fuel.

Let me set the record straight even further. As part of the Nuclear Waste Policy Act, the Department of Energy promised to begin transporting commercial spent fuel to a Federal management facility in 1998. To solidify this promise, contracts were signed between the Federal Government and utilities that own the Nation's nuclear power plants. S. 1936 reaffirms that commitment.

S. 1936 would not weaken current law—it improves it. Spent fuel shipments would still be regulated by the Hazardous Materials Transportation Act and other transportation regulations that have protected us for the past 30 years.

To ensure safety in every step of the transportation network, the Nuclear Regulatory Commission [NRC] already has established demanding regulations on the packaging and transportation of radioactive materials.

Spent nuclear fuel rods are transported in heavy steel containers. Before these can be approved by the NRC, manufacturers must demonstrate that each container design can withstand a number of hypothetical accident conditions, including being dropped from 30 feet onto a flat, unyielding surface; falling onto a vertical steel spike; being engulfed in a 1,475 degree Fahrenheit fire for 30 minutes; and being

submerged under 3 feet of water for 8 hours. The same container also must withstand a separate immersion test in 50 feet of water for 8 hours.

Mr. President, I challenge any other transportation container to measure up to these rigorous tests. Again, these are the tests required under existing law. The containers that meet these tests are some of the most rugged on Earth, and rightfully so.

The Department of Transportation also has responsibility for regulating many aspects of radioactive waste shipments. Shippers are required to file a written route plan that includes the origin and destination of each shipment, preapproved routes to be used, estimated arrival times and emergency telephone numbers in each State a shipment will enter. The principal intent of DOT routing guidelines is to reduce the time in transit.

The agency requires tractor-trailer shipments to use preferred highway routes, such as interstate highways and bypasses that divert them away from highly populated areas. States also may propose alternate routes to the interstate highway system. In fact, at least 10 States already have established alternate routes. Potentially affected States and localities must be consulted in the process of designating alternate routes.

The Transportation Department also requires that shippers notify the Governor 7 days in advance of material being transported through the State. To ensure the safety of these shipments, the Department of Energy has developed a satellite-based system that allows continuous tracking and communications with all DOE shipments.

Mr. President, recent shipments of foreign research reactor fuel from Sunny Point, NC to the Savannah River site in South Carolina provide a perfect example of the safeguards which are in place for spent fuel transportation. In moving this fuel, the Energy Department worked closely with State and local officials on training and planning. They practiced everything—from preparing routine shipping procedures to testing emergency response systems. The Nuclear Waste Policy Act would require DOE to provide similar funding and technical assistance for State, tribal and local training and planning activities in advance of any actual commercial spent fuel shipments.

Mr. President, there is no disputing that transportation is one of the most important issues in our consideration of S. 1936. It is an essential component of an integrated nuclear waste management program.

Clearly, as I have outlined today, nuclear waste can be transported safely and efficiently. A comprehensive plan already is in place to ensure this. To maximize safety, the plan directs shipments away from metropolitan areas

whenever possible. It allows for the selection of the most direct and safest routes. It provides training to national, State and local officials so that they are ready to respond in the event of an emergency.

We know that accidents happen, Mr. President. That is why S. 1936 builds on the existing regulatory framework that, to date, has protected this Nation during more than 2,400 shipments of commercial spent nuclear fuel.

I urge my colleagues to take a close look at this program. Many of my constituents have expressed their interest in nuclear waste transportation. Fortunately, there is good news to report to them. We have a safe, well-coordinated system. It ensures the safety of nuclear waste transportation by relying on the expertise of the Nuclear Regulatory Commission, the Department of Transportation and the Department of Energy, as well as the State and local governments. S. 1936 builds on the system to enhance protection of our citizens and our environment.

I urge my colleagues to support this legislation. By passing S. 1936, we can take the final steps towards ensuring that nuclear waste is managed in the safest possible manner.

#### SECTION 203

Mr. President, I see the distinguished chairman of the Energy and Natural Resources Committee on the floor. My colleague has been very helpful in addressing a concern I had with certain provisions in Section 203 of S. 1936. I appreciate Chairman MURKOWSKI's attention to this matter.

Mr. MURKOWSKI. I thank the Senator from South Dakota. The Senator has raised some understandable concerns regarding requirements for the transportation of spent nuclear fuel.

Mr. PRESSLER. I would like to further question my colleague regarding the transportation training standards addressed in this bill. In particular, section 203 (g) would require the Secretary of Transportation to issue regulations establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. New language, as proposed by the chairman on my behalf, would also require that an employer possess evidence of satisfaction of these training standards before an individual could be employed in such activity. As chairman of the Senate Committee on Commerce, Science, and Transportation, I believe this provision is consistent with existing law, as set forth in Section 5107 of title 49 of the United States Code (49 U.S.C. 5107), which details requirements for the training of employees engaged in hazardous materials transportation. I would ask the chairman if this interpretation is correct?

Mr. MURKOWSKI. The Senator from South Dakota is correct. I defer to my

colleague's judgement and expertise, as chairman of the committee with jurisdiction over the transportation of hazardous materials. I might also add that this provision is not meant to prejudice in any way the means by which the training requirements are satisfied.

Mr. PRESSLER. I thank the Senator from Alaska for clarifying this matter for me. Again, I greatly appreciate his willingness to work with me to resolve this matter. I urge my colleagues to support final passage of S. 1936.

Mr. MURKOWSKI. Mr. President, when the Senate debated the motion to proceed, I suggested that S. 1936 was the answer to nuclear waste and that the editorial page of the Washington Post was the answer to parakeet waste.

I would not insult parakeets by suggesting that would be a good use of the letter from the Administrator of the EPA or the Chair of the CEQ.

The statements made in these letters are inaccurate and simply the shrill hysteria of those who believe that if you repeat a lie often enough, someone might believe you.

The administration, sadly, has demonstrated that they are incapable or unwilling to address this issue, and have now resorted to misstatement, mischaracterization, and distortion to prevent Congress from exercising the leadership the administration has abandoned.

Far from being an assault on our environmental laws, this legislation reaffirms our commitment to the environment, and the health and safety of the American people.

Now, turning specifically to the letters—EPA says we preempt laws in S. 1936:

The substitute the Senate just overwhelmingly adopted does not preempt environmental statutes. EIS requirements are consolidated, but a full EIS is required.

EPA says section 204(i) of our bill prevents the NRC from issuing regulations to protect public health under certain circumstances. This is inflammatory and misleading:

Section 204(i) simply says that the storage of commercial spent fuel, that the NRC will regulate under our bill, does not need to wait while the NRC writes regulations for other forms of nuclear wastes including naval reactor and defense wastes.

EPA says section 205(d)(3)(C) prevents NRC from making important determinations:

All our bill says is that the NRC is not required to assume that the records of waste disposal, security measures, and the natural and engineered barriers will be insufficient to prevent future human intrusion. Without this provision, DOE would have to prove a negative.

Turning now to the letter from CEQ:

The CEQ's letter asserts S. 1936 "Dis-mantles the EIS process under NEPA," by removing the requirement that DOE conduct an "alternatives analysis" on the selection of an interim storage site.

The CEQ's letter entirely misses the point:



This legislation requires an EIS to be prepared by the NRC as part of its licensing process because Congress is today rendering its judgment about the need for interim storage and the location of the site, we say that these decisions need not be duplicated in the NRO process.

I would add that our legislation does not preclude the President from performing an alternatives analysis in selecting an interim storage site other than Nevada, if he determines that the permanent repository at Yucca Mountain is not viable.

There is an EIS. It can be challenged in court, and public safety and the environment is protected.

The EPA letter says the 100 millirem standard is inappropriate:

EPA is given the authority to change the 100 millirem standard if it determines it constitutes an unreasonable risk to public health/safety. What are they complaining about?

There are no valid scientific studies which suggest a release of 100 millirem per year poses any health risk. The probability of adverse health consequences has not been shown to be any less from a zero dose than from a 100 millirem dose.

There is at least a 100 millirem difference between a person living on the east coast and Western States. If you move from Washington to Denver, you would receive 100 or more additional millirem from natural sources. EPA doesn't have a problem with that.

You get 100 extra millirem by living in the White House, a stone building with natural radiation. Is EPA saying the White House is unsafe for the President?

Madam President, I think it is appropriate to note that these letters simply represent an action by the administration to delay what has been delayed for 15 years. There are no positive recommendations in spite of the fact that the committee and myself personally have requested in three letters to the President that if he opposes specific portions of this legislation, he come up with alternatives. Those letters, for all practical purposes, have been ignored. Clearly, this administration simply wishes to put this off to somebody else's watch, and that is irresponsible for the administration. It is irresponsible to duck the issue at this time.

I yield 5 minutes to my friend from Idaho and retain the remainder of my time.

**THE PRESIDING OFFICER.** The Senator from Idaho.

**Mr. CRAIG.** Madam President, let me thank the chairman for the time and thank my colleague, the senior Senator from Louisiana, who has worked so closely with us in the last year to produce and bring to the floor this legislation.

I first introduced this legislation in September of 1995 as S. 1271. We worked our way through the process with hearings held, of course, before the Energy and Natural Resources Committee in December with additional hearings in March and in May.

Finally, we have been able to craft and bring to the floor what I believe and what I call—because I think it is fair to call it that—probably one of the

most comprehensive environmental bills that has come before the Congress this year.

Our Nation's high-level nuclear waste has an answer now that is responsible, fair, and environmentally friendly and is supported by a very large majority of this body and the U.S. House of Representatives.

Today, high-level nuclear waste and highly radioactive used nuclear fuel is accumulating in over 80 sites in 41 States. You have heard our colleagues come to the floor and talk about their concern and the seriousness that this accumulation brings to these individual States.

Today, we stand before you responsible to our country and to our Government in assuring that we will be able to comply with the Nuclear Waste Policy Act of 1982 to meet the court examinations and to be able to do what our country expected us to do to facilitate this legislation. We have all worked closely together in a strong bipartisan way to assure that we could produce the ultimate legislation that would pass. However, in doing all of this, S. 1936 contains many important clarifications and changes that deal with concerns raised regarding the details of the legislation amongst most of our Members. As a result of that, I think we can hopefully today produce a vote and a work product that the U.S. House of Representatives will take as we reconvene in September.

The issue is clear, and the proposal we have before you is direct. It does not violate any environmental laws, and yet directs our country to move responsibly and decisively to resolve an issue that has plagued our country for well over two decades. I hope that today our colleagues in a final vote on this issue will vote in very large numbers to assure that we move forward on this issue.

Let me cover one other detailed topic. It is frustrating to me as the two Senators from Nevada have come to the floor on several occasions over the last week and a half to talk about the reality of a 100-millirem test and how, for some reason, this in some way questioned the integrity of a site and the development of a deep geological repository at Yucca Mountain. Let me quote from the Nevada Administrative Code, section 459.335. This is the code that governs 153 facilities in the State of Nevada. It says this: "The total effective dose equivalent to any member of the public from its licensed and registered operation does not exceed 100 millirems per year, not including contribution from the disposal by the licensee of radioactive material in sanitary sewage," and so on and so forth.

The point I am making here—and this chart clearly spells it out—is that the standards that we have established, the standards that come from the GAO audit, the standards that the State of

Nevada, the very State the two Senators are from and arguing today, argues this. It argues right here that 153 facilities in the State of Nevada that use radioactive material cannot exceed the very standard that we are saying Yucca Mountain cannot exceed.

I hope, once and for all, that we do not shake the scare tree, that we look at the facts and we look at the statistics, and they are very clear. Whether it is proposed EPA guidance of 1995, whether it is the Nuclear Regulatory Commission limit, whether it is the proposed DOE limit, whether it is the State of Nevada, or whether it is Yucca Mountain, what we are talking about here is an international standard well accepted by all of the professionals in the field and accepted by the State of Nevada, by the State government of Nevada and, obviously, by State politicians in Nevada.

Why do they arrive at that standard? Because that is the national standard. That is the international standard that clearly says this is an acceptable level.

Madam President, I recognize my time is up.

**Mr. MURKOWSKI.** Let me yield time to the Senator from Idaho to conclude his remarks.

**Mr. CRAIG.** I thank my chairman for yielding to me.

Let me close with this thought. It has been a long, hard effort. It took an awful lot of very talented people involved.

Let me thank Karen Hunsicker, David Garman, Gary Ellsworth, and Jim Beirne of the Energy and Natural Resources staff for the tremendous work that they have done and for the expertise they themselves have developed, the cooperative effort they have had in working with all of the staffs in a bipartisan manner.

Let me thank once again our chairman, **FRANK MURKOWSKI**, and also the senior Senator from the State of Louisiana, **BENNETT JOHNSTON**, for his dedicated effort over several decades to assure that there would be a safe and responsible solution to the management of high-level nuclear waste, and we are clearly on the threshold of allowing that to happen.

I hope in the end once this makes it to our President's desk that he will read the bill—read the bill—and look at the changes we have made. I think in doing so this President will say that we have been responsible to our country and to the State of Nevada in promulgating legislation that can deal with a very important national issue.

**Mr. JOHNSTON.** Madam President, will the Senator yield to me for a quick comment to endorse what he has said about the good staff work.

Let me add to that great staff work **SAM FOWLER**, **BOB SIMON**, and **BEN COOPER** on our side, who have really done an outstanding job as well.

**Mr. MURKOWSKI.** Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. Eight minutes.

Mr. MURKOWSKI. I yield to the Senator from Wyoming 3 minutes that he requested.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Thank you very much. Madam President, I wanted to rise in support of this bill before it is voted on. I have been involved in it for some time not only here but in Wyoming, and I just wanted to kind of generally share some thoughts that I have. We have talked about it a great deal. We probably have talked about it more than we really needed to.

Nevertheless, there has been a great deal of detail naturally, as there should be. But it seems to me that there are some basic things that most of us do understand and most of us accept, and I think that is where we are.

First, we have nuclear waste. We have to do something about it. It is there. It is stored all over the country in a number of sites—I think 80. Clearly, it is more difficult to ensure safety that way than it is if we put it in a place that we can ensure safety. We are going to have more. We need to be prepared for that.

The ratepayers have paid to do something about it. They have paid, I think, somewhere near \$12 billion. We spent \$5 billion already in preparing this spot. There is not much to show for that. Yet, we need to make sure that there is. It makes sense, it seems to me, to move to the permanent site with an intermediate site that we have for storage. We have been through that intermediate storage thing for several years. We have been unsuccessful in doing it.

Transportation is, in fact, something that is the highest of scientific study and I think as safe as anything can be. There are always risks.

I have been disappointed this whole time of dealing with the storage of nuclear waste. Opponents in the press talk about nuclear waste dumps. They are not dumps. They are high-tech storage, as high tech as we can be.

It is also true that the Government has agreed to storage in 1998. Let us do it.

So even though that is very nontechnical, Madam President, I think those are about the basic ideas we have to understand. Most of us know we have to do something about it. This bill gives us the opportunity to live up to the challenges we have and to do the things we have to do.

I thank the Senator for the time.

Mr. MURKOWSKI. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. MURKOWSKI. I thank the Chair.

Mr. BRYAN. May I inquire of the Chair how much time we have on our side?

The PRESIDING OFFICER. The Senator from Nevada has 9 minutes.

Mr. BRYAN. Madam President, I yield myself 4 minutes.

I have tried purposely to keep the focus on the issues, but I must say that my friend from Idaho has spoken and my friend from Wyoming has just spoken, and they obviously reach a different conclusion as to the urgency of the need than does the scientific community, which has specifically rejected the need.

Let me say with great respect to them, if they disagree, they have the right under the law to volunteer their States as sites for interim storage. That is permissible.

I find some irony in the fact they are eager to have it come to us in Nevada and yet suggest that their own State would not be available.

There is another irony. Late last week, another letter was circulated that raised some concerns about the interstate shipment of trash, and this letter goes on to say, in part:

It is important that Congress pass interstate legislation this year. Cities and towns all across the Nation are being forced to take trash from other States. Many States have tried to restrict the shipments.

The letter goes on to say:

But every time they do, they have been challenged in court and their laws have been overturned as a violation of the commerce clause of the Constitution. It is clear that States cannot protect themselves, their residents or their land from being spoiled by out-of-State waste. We need Federal legislation to empower States and communities with the authority to manage solid waste within their borders. Without legislation, they will have to continue to accept unwanted trash.

Does anybody see a disconnect or an inconsistency? Here they are talking about trash, and many of my colleagues who have ventured forth in the Chamber and who have expressed support for this legislation have gotten greatly exercised about the trash issue. You cannot have it both ways. My colleague and I have signed on to this letter because we understand the concerns. You can be concerned about trash but not the most dangerous, lethal trash known to mankind, high-level nuclear waste.

Finally, let me just say that we have talked about the standards ad nauseam. I think it just one more time needs to be pointed out that the National Academy of Sciences—these are the scientists which this body asked to make recommendations about standards—reported and concluded that the standards in terms of radioactive exposure should be from 10 to 30 millirems.

That is their view. They are scientists. Nobody—I repeat, nobody—in the world has set a 100-millirem standard, and to point out that those who are charged under our law with the responsibility of enforcing and administering the environmental laws, the

Environmental Protection Agency, through Carol Browner, the Council on Environmental Quality, the President of the United States, the Department of Energy, all have urged a no vote on this piece of legislation.

Now, I guess what they do not have in common with some of the advocates is that they are not supporting the view of the nuclear industry. This is special interest legislation at its worst. There is no groundswell for this legislation. The nuclear industry and its phalanx of lobbyists who ply these halls every day with enormous amounts of money and power and influence, they are the ones who are driving this debate by creating a contrived and fabricated crisis that purports to call out for a legislative response.

That is simply not the case. There is no need. The damage that we do to our Nation's environmental laws and to people across America that can be affected by this is unconscionable—unconscionable. No environmental organization in America—none—supports this legislation. All oppose the irreparable damage it would do to our environmental laws. And no agency charged by law at the Federal level to enforce the environmental standards supports this legislation. All have concluded that to do so would be irreparable, do irreversible damage to our environment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Alaska.

Mr. CRAIG addressed the Chair.

Mr. MURKOWSKI. I would ask at the conclusion of the debate time for the yeas and nays on final passage.

Mr. CRAIG. Will the Senator yield to me one moment?

Mr. MURKOWSKI. I yield to my friend from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I thank my chairman for yielding.

I apologize. Some of the people who work the most closely with us we often forget. I want the RECORD to show that Nils Johnson on my staff, who has worked on this issue for a good number of years with me and the staff of the committee, was a tremendous asset through all of this debate.

I thank the Senator very much.

Mr. MURKOWSKI. Again, Madam President, may I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. MURKOWSKI. I thank the Chair.

Madam President, as we approach the final minutes prior to voting, I would like to very briefly refute some of the specific claims that have been made in the Chamber in the debate. These claims, of course, have had to do with



transportation, safety, cask integrity, radiation, the application of environmental laws, and, of course, finally, the issue of just who benefits from this legislation.

The issue of transportation and safety and cask integrity is important, and there has been every effort to describe that the transportation of used fuel is something that has a risk. But the opponents of this legislation talk about it as if it represents some novel and untested approach, and these statements are not true.

We have been moving spent fuel both in the United States and around the world for decades. There have been over 20,000 movements of spent fuel around the world over the last 40 years; 30,000 tons have been moved in France alone. That is equal to what we have in storage. So it can be moved, and it can be moved safely because it is designed to be moved safely.

This bill, S. 1936, includes new measures, new training and new assistance to make the movement even safer. The fact is nuclear materials will be transported with or without the passage of this bill. Spent fuel, foreign research reactor fuel, naval fuel, and other radioactive materials are being transported every day in the United States.

Another example is we build submarines on the east coast in Connecticut, but when the sub has served its useful life, the fuel is removed and taken to Idaho. The sub is cut up. The reactor compartment is buried in Hanford, WA. So we all have an interest in this, and we must address responsibly a solution.

Another claim I want to refute has to do with the generalization that has been made on the floor of the Senate that somehow we are waiving the application of environmental laws that are needed to protect the public health and safety. S. 1936 requires the NRC to prepare environmental impact statements, or EIS's, as part of a decision to license a central interim storage facility, and the EIS's must include the impact of transporting the used fuel to the interim storage facility.

There is also judicial review. S. 1936 requires the DOE to submit an EIS on construction and operation of the repository.

It is clear, Madam President, S. 1936 does not trample environmental laws as has been charged on this floor. This is a unique facility. None like it has ever been developed anywhere in the world.

So the regulatory licensing program for a permanent facility contained in S. 1936 is designed to protect public health and safety without reliance upon other laws.

With respect to NEPA, we recognize Congress has decided that we will build an interim site in Nevada, and we do not let the NEPA process revisit the decision that Congress has already

made. That is what we are saying. NEPA applies. We are simply saying NEPA does not have to revisit the decision of policy that we are making here today.

The last claim I am compelled to refute is on the issue of timing. Opponents say S. 1936 claims that there is no need to tackle the issue now, that it is a waste of time.

That does not sound like anything other than Washington bureaucracy: Let's defer the decision. Let's not take action. Let's keep spending money without results. Let's maintain the status quo. Let's promote the stalemate. Let's maintain the gridlock."

For 15 years we have collected billions of dollars. We have expended \$6 billion and we go nowhere. We have a chance to go somewhere today.

But the Washington bureaucracy wants to say: "Let's keep taking the consumers' money, but not provide them with nuclear waste removal services we promised them in return. Let's ignore the recent court cases and let us stick it to the taxpayers who will have to pay the damages."

Our opponents would have you believe the Government has no responsibility. But the recent court decision has blown our opponents' arguments out of the water. The Federal Government has a responsibility. Failure to live up to that responsibility will have significant consequences, so said the court. And it said so unanimously.

Finally, the fifth issue I must refute is the issue of just who benefits from the legislation. The other side has tried to paint this bill as one of exclusively benefiting the nuclear power lobby. But I have letters from 23 States, written by Governors and attorneys general, urging the Congress to pass and the President to sign the bill. We have letters from Governors, Governor Lawton Chiles of Florida and others, relative to that matter.

We have broad support for this bill across the political spectrum. Ours is a bipartisan effort, Democrats, Republicans, liberals, conservatives. We are supported by unions as well, the Electrical Workers Union, Utility Workers, AFL-CIO, Joiners and Carpenters. The fire chiefs in Nevada have indicated support of this. As have many Nevadans—I have already entered that in the RECORD.

Our constituents should not have to pay twice for nuclear waste services. We do not have to create 80 waste dumps, including some in populated areas or sitting just outside national parks, when one will do. We do not have to settle for further delay, further stalemate and further gridlock. We can avoid multibillion-dollar damages against the taxpayer for the Government's failure to address a problem that a recent court case says is Government's responsibility. We can do that. It is the right thing to do for the

consumers and electric ratepayers, for the environment, for public health and safety, and I urge we pass Senate bill 1936.

Madam President, at this time I would like to thank my dear friend and colleague, Senator JOHNSTON, who has been involved in this much longer than I, for his steadfast commitment to what is responsible and what is right for the country, to finally address our responsibility. I thank my friend, LARRY CRAIG, who introduced this legislation initially, and Senator DOMENICI, Senator GRAMM, Senator THURMOND, Senator SIMPSON, Senator FAIRCLOTH, Senator GORTON. I recognize Senator THOMAS, as well as my two colleagues, Senator BRYAN and Senator REID. I know what a tough thing this is for your State.

Mr. REID addressed the Chair. The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MURKOWSKI. Let me thank the staff as well. I would like to thank the Energy Committee staff, including Gregg Renkes, Gary Ellsworth, Jim Beirne, Karen Hunsicker, David Garman, David Fish and Betty Nevitt, as well as Nils Johnson from Senator CRAIG's office, and the minority staff, Ben Cooper, Sam Fowler and Bob Simon.

I yield the floor. Mr. REID. Madam President, I apologize for being rude but we have a Member who needs to vote and that is why we need to stick with the program.

If anyone believes in environmental standards, you must vote against this bill. This bill will ultimately open the door for the greatest nuclear waste transportation project in human history, sending thousands and thousands of tons of the Nation's radioactive waste onto the roads and rails. Last year we had 2,500 accidents on rail that only involved trains, and 6,000 accidents at railroad crossings over the last year.

Madam President, in the last 10 years, 26,354 accidents occurred with damage to track, structure or equipment in excess of \$6,300 dollars. There were 60,553 accidents at railroad crossings.

This bill is bad, bad, bad, if you support environmental standards. If you oppose corporate welfare, vote against this. The court decision helps our cause. That is why we offered an amendment to that effect. They keep coming back saying it was a unanimous opinion. We agree. Three judges said they have to follow the contract they entered into. We agree with that.

Hazel O'Leary is not only the Secretary of the Department of Energy, she is also a corporate lawyer. She said that decision does not affect what the DOE is going to do. In fact, she says, if this bill passes it will, again, harm what the decision did.

So, Madam President, if you believe in returning authority to the States,

vote against this bill. If you oppose Government taking private property, vote against this bill. Homeowners along transportation routes may well find their property values reduced as a result of nuclear waste trains and trucks passing by, and that is an understatement. No mechanism exists in S. 1936 to compensate homeowners in such a circumstance. If you believe in public participation in regulatory proceedings, vote against this bill. If you believe in a rational nuclear waste policy, vote against this bill.

If you believe that the nuclear industry is entitled to lavish taxpayer-financed benefits from the Federal Government at the expense of public health and safety, then you should vote for this legislation.

We ask Senators to vote against this legislation. This is the most anti-environmental legislation of this Congress and that says a great deal because this is known as the most anti-environmental Congress in the history of this country.

Mr. MURKOWSKI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. I ask we proceed with the vote. The yeas and nays have been ordered.

I ask for the regular order.

The PRESIDING OFFICER. The Senators from Nevada yield back their time?

Mr. REID. We will. We have. We do.

The PRESIDING OFFICER. All time having been yielded back, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. ABRAHAM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 259 Leg.]

#### YEAS—63

Abraham	Gramm	Leahy
Ashcroft	Grams	Levin
Bennett	Grassley	Lott
Bond	Gregg	Lugar
Brown	Harkin	Mack
Burns	Hatch	McCain
Cochran	Hatfield	McConnell
Cohen	Hefflin	Moseley-Braun
Coverdell	Helms	Murkowski
Craig	Hollings	Murray
D'Amato	Hutchinson	Nickles
DeWine	Inhofe	Nunn
Domenici	Jeffords	Pressler
Faircloth	Johnston	Robb
Frahm	Kassebaum	Roth
Frist	Kempthorne	Santorum
Gorton	Kohl	Shelby
Graham	Kyl	Simon

Simpson  
Smith  
Snowe

Specter  
Stevens  
Thomas

Thompson  
Thurmond  
Warner

#### NAYS—37

Akaka  
Baucus  
Biden  
Bingaman  
Boxer  
Bradley  
Breaux  
Bryan  
Bumpers  
Byrd  
Campbell  
Chafee  
Coats

Conrad  
Daschle  
Dodd  
Dorgan  
Exon  
Feingold  
Feinstein  
Ford  
Glenn  
Inouye  
Kennedy  
Kerry  
Kerry

Lautenberg  
Lieberman  
Mikulski  
Moynihan  
Pell  
Pryor  
Reid  
Rockefeller  
Sarbanes  
Wellstone  
Wyden

The bill (S. 1936), as amended, was passed, as follows:

#### S. 1936

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Nuclear Waste Policy Act of 1982 is amended to read as follows:*

#### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Nuclear Waste Policy Act of 1996'.

"(b) TABLE OF CONTENTS.—

"Sec. 1. Short title and table of contents.

"Sec. 2. Definitions.

#### "TITLE I—OBLIGATIONS

"Sec. 101. Obligations of the Secretary of Energy.

#### "TITLE II—INTEGRATED MANAGEMENT SYSTEM

"Sec. 201. Intermodal transfer.

"Sec. 202. Transportation planning.

"Sec. 203. Transportation requirements.

"Sec. 204. Interim storage.

"Sec. 205. Permanent repository.

"Sec. 206. Land withdrawal.

#### "TITLE III—LOCAL RELATIONS

"Sec. 301. Financial assistance.

"Sec. 302. On-site representative.

"Sec. 303. Acceptance of benefits.

"Sec. 304. Restrictions on use of funds.

"Sec. 305. Land conveyances.

#### "TITLE IV—FUNDING AND ORGANIZATION

"Sec. 401. Program funding.

"Sec. 402. Office of Civilian Radioactive Waste Management.

"Sec. 403. Federal contribution.

#### "TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

"Sec. 501. Compliance with other laws.

"Sec. 502. Judicial review of agency actions.

"Sec. 503. Licensing of facility expansions and transshipments.

"Sec. 504. Siting a second repository.

"Sec. 505. Financial arrangements for low-level radioactive waste site closure.

"Sec. 506. Nuclear Regulatory Commission training authorization.

"Sec. 507. Emplacement schedule.

"Sec. 508. Transfer of title.

"Sec. 509. Decommissioning pilot program.

"Sec. 510. Water rights.

#### "TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"Sec. 601. Definitions.

"Sec. 602. Nuclear Waste Technical Review Board.

"Sec. 603. Functions.

"Sec. 604. Investigatory powers.

"Sec. 605. Compensation of members.

"Sec. 606. Staff.

"Sec. 607. Support services.

"Sec. 608. Report.

"Sec. 609. Authorization of appropriations.

"Sec. 610. Termination of the board.

#### "TITLE VII—MANAGEMENT REFORM

"Sec. 701. Management reform initiatives.

"Sec. 702. Reporting.

"Sec. 703. Effective date.

#### "SEC. 2. DEFINITIONS.

"For purposes of this Act:

"(1) ACCEPT, ACCEPTANCE.—The terms 'accept' and 'acceptance' mean the Secretary's act of taking possession of spent nuclear fuel or high-level radioactive waste.

"(2) AFFECTED INDIAN TRIBE.—The term 'affected Indian tribe' means any Indian tribe—

"(A) whose reservation is surrounded by or borders an affected unit of local government, or

"(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of an interim storage facility or a repository if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"(3) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

"(4) ATOMIC ENERGY DEFENSE ACTIVITY.—The term 'atomic energy defense activity' means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

"(A) Naval reactors development.

"(B) Weapons activities including defense inertial confinement fusion.

"(C) Verification and control technology.

"(D) Defense nuclear materials production.

"(E) Defense nuclear waste and materials byproducts management.

"(F) Defense nuclear materials security and safeguards and security investigations.

"(G) Defense research and development.

"(5) CIVILIAN NUCLEAR POWER REACTOR.—The term 'civilian nuclear power reactor' means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

"(6) COMMISSION.—The term 'Commission' means the Nuclear Regulatory Commission.

"(7) CONTRACTS.—The term 'contracts' means the contracts, executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, under section 302(a) of the Nuclear Waste Policy Act of 1982, by the Secretary and any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for acceptance of such waste or fuel by the Secretary and the payment of fees to offset the Secretary's expenditures, and any subsequent contracts executed by the Secretary pursuant to section 401(a) of this Act.

"(8) CONTRACT HOLDERS.—The term 'contract holders' means parties (other than the Secretary) to contracts.

"(9) DEPARTMENT.—The term 'Department' means the Department of Energy.

"(10) DISPOSAL.—The term 'disposal' means the emplacement in a repository of spent nuclear fuel, high-level radioactive waste, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits recovery of such material for any future purpose.



"(11) DISPOSAL SYSTEM.—The term 'disposal system' means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

"(12) EMPLACEMENT SCHEDULE.—The term 'emplacement schedule' means the schedule established by the Secretary in accordance with section 507(a) for emplacement of spent nuclear fuel and high-level radioactive waste at the interim storage facility.

"(13) ENGINEERED BARRIERS AND ENGINEERED SYSTEMS AND COMPONENTS.—The terms 'engineered barriers' and 'engineered systems and components' mean man-made components of a disposal system. These terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

"(14) HIGH-LEVEL RADIOACTIVE WASTE.—The term 'high-level radioactive waste' means—

"(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

"(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation, which includes any low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

"(15) FEDERAL AGENCY.—The term 'Federal agency' means any Executive agency, as defined in section 105 of title 5, United States Code.

"(16) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

"(17) INTEGRATED MANAGEMENT SYSTEM.—The term 'integrated management system' means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste under title II of this Act.

"(18) INTERIM STORAGE FACILITY.—The term 'interim storage facility' means a facility designed and constructed for the receipt, handling, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

"(19) INTERIM STORAGE FACILITY SITE.—The term 'interim storage facility site' means the specific site within area 25 of the Nevada test site that is designated by the Secretary and withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

"(20) LOW-LEVEL RADIOACTIVE WASTE.—The term 'low-level radioactive waste' means radioactive material that—

"(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or by-product material as defined in section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

"(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

"(21) METRIC TONS URANIUM.—The terms 'metric tons uranium' and 'MTU' mean the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

"(22) NUCLEAR WASTE FUND.—The terms 'Nuclear Waste Fund' and 'waste fund' mean the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

"(23) OFFICE.—The term 'Office' means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

"(24) PROGRAM APPROACH.—The term 'program approach' means the Civilian Radioactive Waste Management Program Plan, dated May 6, 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

"(25) REPOSITORY.—The term 'repository' means a system designed and constructed under title II of this Act for the geologic disposal of spent nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

"(26) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

"(27) SITE CHARACTERIZATION.—The term 'site characterization' means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

"(28) SPENT NUCLEAR FUEL.—The term 'spent nuclear fuel' means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

"(29) STORAGE.—The term 'storage' means retention of spent nuclear fuel or high-level radioactive waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

"(30) WITHDRAWAL.—The term 'withdrawal' has the same definition as that set forth in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

"(31) YUCCA MOUNTAIN SITE.—The term 'Yucca Mountain site' means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

## TITLE I—OBLIGATIONS

### SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

"(a) DISPOSAL.—The Secretary shall develop and operate an integrated management system for the storage and permanent disposal of spent nuclear fuel and high-level radioactive waste.

"(b) INTERIM STORAGE.—The Secretary shall store spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders at an interim storage facility pursuant to section 204 in accordance with the emplacement schedule, beginning not later than November 30, 1999.

"(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary. The Secretary shall procure all systems and components necessary to transport spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders to and among facilities comprising the Integrated Management System. Consistent with the Buy American Act (41 U.S.C. 10a-10c), unless the Secretary shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, all such systems and components procured by the Secretary shall be manufactured in the United States, with the exception of any transportable storage systems purchased by contract holders prior to the effective date of the Nuclear Waste Policy Act of 1996 and procured by the Secretary from such contract holders for use in the integrated management system.

"(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

"(e) PRIVATE SECTOR PARTICIPATION.—In administering the Integrated Management System, the Secretary shall, to the maximum extent possible, utilize, employ, procure and contract with, the private sector to fulfill the Secretary's obligations and requirements under this Act.

"(f) PRE-EXISTING RIGHTS.—Nothing in this Act is intended to or shall be construed to modify—

"(1) any right of a contract holder under section 302(a) of the Nuclear Waste Policy Act of 1982, or under a contract executed prior to the date of enactment of this Act under that section; or

"(2) obligations imposed upon the Federal Government by the United States District Court of Idaho in an order entered on October 17, 1995 in *United States v. Batt* (No. 91-0054-S-EJL).

"(g) LIABILITY.—Subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste for storage or disposal under this Act.

## TITLE II—INTEGRATED MANAGEMENT SYSTEM

### SEC. 201. INTERMODAL TRANSFER.

"(a) ACCESS.—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site.

"(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than November 30, 1999. Intermodal transfer and related activities are incidental to the interstate transportation of spent nuclear fuel and high-level radioactive waste.

"(c) ACQUISITIONS.—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

"(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and right-of-way within Lincoln

County, Nevada, as required to facilitate replacement of land and city wastewater disposal facilities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than November 30, 1999.

"(e) NOTICE AND MAP.—Within 6 months of the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

"(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this subsection; and

"(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors and legal descriptions and make minor adjustments in the boundaries.

"(f) IMPROVEMENTS.—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

"(g) LOCAL GOVERNMENT INVOLVEMENT.—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

"(h) BENEFITS AGREEMENT.—

"(1) IN GENERAL.—The Secretary shall offer to enter into an agreement with the City of Caliente and Lincoln County, Nevada, concerning the integrated management system.

"(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of the City of Caliente and Lincoln County, Nevada.

"(3) AMENDMENT.—An agreement entered into under this subsection may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with paragraph (4).

"(4) TERMINATION.—The Secretary shall terminate the agreement under this subsection if any major element of the integrated management system may not be completed.

"(5) LIMITATION.—Only one agreement may be in effect at any one time.

"(6) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

"(i) CONTENT OF AGREEMENT.—

"(1) SCHEDULE.—In addition to the benefits to which the City of Caliente and Lincoln County is entitled to under this title, the Secretary shall make payments under the benefits agreement in accordance with the following schedule:

"BENEFITS SCHEDULE  
"(Amounts in millions)

Event	Payment
"(A) Annual payments prior to first receipt of spent fuel .....	\$2.5

"(B) Annual payments beginning upon first spent fuel receipt .....	5
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"(C) Payment upon closure of the intermodal transfer facility .....	5
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"(2) DEFINITIONS.—For purposes of this section, the term—

"(A) 'spent fuel' means high-level radioactive waste or spent nuclear fuel; and

"(B) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) ANNUAL PAYMENTS.—Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

"(4) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to 1/2 of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) RESTRICTIONS.—The Secretary may not restrict the purposes for which the payments under this section may be used.

"(6) DISPUTE.—In the event of a dispute concerning such agreement, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(7) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under this section shall constitute a commitment by the United States to make payments in accordance with such agreement under section 401(c)(2).

"(j) INITIAL LAND CONVEYANCES.—

"(1) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after enactment of this Act, all right, title and interest of the United States in the property described in paragraph (2), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Lincoln, Nevada, unless the county notifies the Secretary of the Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Lincoln under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Lincoln County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

"(2) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, shall be conveyed under paragraph (1) to the County of Lincoln, Nevada:

Map 10; Lincoln County, parcel M, industrial park site.

Map 11; Lincoln County, parcel F, mixed use industrial site.

Map 13; Lincoln County, parcel J, mixed use, Alamo Community Expansion Area.

Map 14; Lincoln County, parcel E, mixed use, Pioche Community Expansion Area.

Map 15; Lincoln County, parcel B, landfill expansion site.

"(3) CONSTRUCTION.—The maps and legal descriptions special conveyances referred to in paragraph (2) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

"(4) EVIDENCE OF TITLE TRANSFER.—Upon the request of the County of Lincoln, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

"SEC. 202. TRANSPORTATION PLANNING.

"(a) TRANSPORTATION READINESS.—The Secretary shall take those actions that are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas, beginning not later than November 30, 1999, and, by that date, shall, in consultation with the Secretary of Transportation, develop and implement a comprehensive management plan that ensures that safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site beginning not later than November 30, 1999.

"(b) TRANSPORTATION PLANNING.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility no later than November 30, 1999. Among other things, such planning shall provide a schedule and process for addressing and implementing as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, and public education regarding transportation of spent nuclear fuel and high-level radioactive waste, and transportation tracking programs.

"SEC. 203. TRANSPORTATION REQUIREMENTS.

"(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

"(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

"(c) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and funds to States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste for training for public safety officials of appropriate units of local



government. The Secretary shall also provide technical assistance and funds for training directly to national nonprofit employee organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations, and shall be consistent with any training standards established by the Secretary of Transportation in accordance with subsection (g). The Secretary's duty to provide technical and financial assistance under this subsection shall be limited to amounts specified in annual appropriations.

"(d) PUBLIC EDUCATION.—The Secretary shall conduct a program to educate the public regarding the transportation of spent nuclear fuel and high-level radioactive waste, with an emphasis upon those States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste.

"(e) COMPLIANCE WITH TRANSPORTATION REGULATIONS.—Any person that transports spent nuclear fuel or high-level radioactive waste under the Nuclear Waste Policy Act of 1986, pursuant to a contract with the Secretary, shall comply with all requirements governing such transportation issued by the Federal, State and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation that is in or affects interstate commerce must comply with such requirements, as required by section 5126 of title 49, United States Code.

"(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of 49 United States Code 20109 and 49 United States Code 31105.

"(g) TRAINING STANDARD.—(1) No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(2) If the Secretary of Transportation determines, in promulgating the regulation required by paragraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation

and the Commission shall work through their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

"(3) The training standards required to be promulgated under paragraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

"(A) a specified minimum number of hours of initial off site instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

"(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

"(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(4) There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

#### "SEC. 204. INTERIM STORAGE.

"(a) AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations, which regulations shall be amended by the Commission as necessary to implement the provisions of this Act. The interim storage facility shall commence operation in phases in accordance with subsection (b).

"(b) SCHEDULE.—(1) The Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at the interim storage facility at the interim storage facility site by November 30, 1999, except that:

"(A) The Secretary shall not begin any construction activities at the interim storage facility site before December 31, 1998.

"(B) The Secretary shall cease all activities (except necessary termination activities) at the Yucca Mountain site if the President determines, in his discretion, on or before December 31, 1998, based on a preponderance of the information available at such time, that the Yucca Mountain site is unsuitable for development as a repository, including geologic and engineered barriers, because of a substantial likelihood that a repository of useful size, cannot be designed, licensed, and constructed at the Yucca Mountain site.

"(C) No later than June 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include—

"(i) the preliminary design concept for the critical elements of the repository and waste package,

"(ii) a total system performance assessment, based upon the design concept and the scientific data and analysis available by June 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geologic setting relative to the overall system performance standard set forth in section 205(d) of this Act,

"(iii) a plan and cost estimate for the remaining work required to complete a license application, and

"(iv) an estimate of the costs to construct and operate the repository in accordance with the design concept.

"(D) Within 18 months of a determination by the President that the Yucca Mountain site is unsuitable for development as a repository under subparagraph (B), the President shall designate a site for the construction of an interim storage facility. If the President does not designate a site for the construction of an interim storage facility, or the construction of an interim storage facility at the designated site is not approved by law within 24 months of the President's determination that the Yucca Mountain site is not suitable for development as a repository, the Secretary shall begin construction of an interim storage facility at the interim storage facility site as defined in section 2(19) of this Act. The interim storage facility site as defined in section 2(19) of this Act shall be deemed to be approved by law for purposes of this section.

"(2) Upon the designation of an interim storage facility site by the President under paragraph (1)(D), the Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at an interim storage facility at the designated site, except that the Secretary shall not begin any construction activities at the designated interim storage facility site before the designated interim storage facility site is approved by law.

#### "(c) DESIGN.—

"(1) The interim storage facility shall be designed in two phases in order to commence operations no later than November 30, 1999. The design of the interim storage facility shall provide for the use of storage technologies, licensed, approved, or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

"(2) The Secretary shall consent to an amendment to the contracts to provide for reimbursement to contract holders for transportable storage systems purchased by contract holders if the Secretary determines that it is cost effective to use such transportable storage systems as part of the integrated management system, provided that the Secretary shall not be required to expend any funds to modify contract holders' storage or transport systems or to seek additional regulatory approvals in order to use such systems.

#### "(d) LICENSING.—

"(1) PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than November 30, 1999.

"(2) FIRST PHASE.—No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The Environmental Report and Safety Analysis Report submitted in support of such license application shall be consistent with the scope of authority requested in the license application. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more

than 15,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 16 months from the date of the submittal of the application for such license.

"(3) SECOND PHASE.—No later than 30 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. If the Secretary does not submit the license application for construction of a repository by February 1, 2002, or does not begin full spent nuclear fuel receipt operations at a repository by January 17, 2010, the license shall authorize a storage capacity of 60,000 MTU. The license application shall be submitted such that the license can be issued to permit the second phase facility to begin full spent nuclear fuel receipt operations no later than December 31, 2002. The license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.

"(e) ADDITIONAL AUTHORITY.—

"(1) CONSTRUCTION.—For purposes of complying with this section, the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of the Nuclear Waste Policy Act of 1996 and shall commence construction of each phase of the interim storage facility subsequent to submittal of the license application for such phase except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

"(2) FACILITY USE.—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of the Nuclear Waste Policy Act of 1996 within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

"(3) EMPLACEMENT OF FUEL AND WASTE.—Subject to subsection (1), once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, as set forth in the Secretary's annual capacity report dated March, 1995 (DOE/RW-0457), the Secretary shall accept, in an amount not less than 25 percent of the difference between the contractual acceptance rate and the annual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 507(a), the following radioactive materials—

"(A) spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors that have permanently ceased operation on or before the date of enactment of the Nuclear Waste Policy Act of 1996;

"(B) spent nuclear fuel from foreign research reactors, as necessary to promote non-proliferation objectives; and

"(C) spent nuclear fuel, including spent nuclear fuel from naval reactors, and high-level

radioactive waste from atomic energy defense activities.

"(f) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

"(1) PRELIMINARY DECISIONMAKING ACTIVITIES.—The Secretary's and President's activities under this section, including, but not limited to, the selection of a site for the interim storage facility, assessments, determinations and designations made under section 204(b), the preparation and submittal of a license application and supporting documentation, the construction of a facility under paragraph (e)(1) of this section, and facility use pursuant to paragraph (e)(2) of this section shall be considered preliminary decisionmaking activities for purposes of judicial review. The Secretary shall not prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of such Act before conducting these activities.

"(2) ENVIRONMENTAL IMPACT STATEMENT.—

"(A) FINAL DECISION.—A final decision by the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—

"(i) shall ensure that the scope of the Environmental Impact Statement is consistent with the scope of the licensing action; and

"(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

"(B) CONSIDERATIONS.—Such Environmental Impact Statement shall not consider—

"(i) the need for the interim storage facility, including any individual component thereof;

"(ii) the time of the initial availability of the interim storage facility;

"(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

"(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

"(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

"(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

"(g) JUDICIAL REVIEW.—Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.

"(h) WASTE CONFIDENCE.—The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Com-

mission of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(i) STORAGE OF OTHER SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.—No later than 18 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Commission shall, by rule, establish criteria for the storage in the interim storage facility of fuel and waste listed in subparagraph (e)(3) (A) through (C), to the extent such criteria are not included in regulations issued by the Commission and existing on the date of enactment of the Nuclear Waste Policy Act of 1996. Following establishment of such criteria, the Secretary shall seek authority, as necessary, to store fuel and waste listed in subparagraph (e)(3) (A) through (C) at the interim storage facility. None of the activities carried out pursuant to this subsection shall delay, or otherwise affect, the development, construction, licensing, or operation of the interim storage facility.

"(j) SAVINGS CLAUSE.—The Commission shall, by rule, establish procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. Nothing in this Act shall affect any such procedures, or any licenses or approvals issued pursuant to such procedures in effect on the date of enactment.

"SEC. 205. PERMANENT REPOSITORY.

"(a) REPOSITORY CHARACTERIZATION.—

"(1) GUIDELINES.—The guidelines promulgated by the Secretary and published at part 960 of title 10, Code of Federal Regulations are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.

"(2) SITE CHARACTERIZATION ACTIVITIES.—The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization. The Secretary shall modify or eliminate those site characterization activities designed only to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).

"(3) SCHEDULE DATE.—Consistent with the schedule set forth in the program approach, as modified to be consistent with the Nuclear Waste Policy Act of 1996, no later than February 1, 2002, the Secretary shall apply to the Commission for authorization to construct a repository. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination, further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.

"(4) MAXIMIZING CAPACITY.—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository, in



the most cost-effective manner, consistent with the need for disposal capacity.

"(b) **REPOSITORY LICENSING.**—Upon the completion of any licensing proceeding for the first phase of the interim storage facility, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

"(1) **CONSTRUCTION AUTHORIZATION.**—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(2) **LICENSE.**—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(3) **CLOSURE.**—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission's regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment upon finding that there is reasonable assurance that the repository can be permanently closed—

"(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(4) **POST-CLOSURE.**—The Secretary shall take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

"(A) breaching the repository's engineered or geologic barriers; or

"(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

"(c) **MODIFICATION OF REPOSITORY LICENSING PROCEDURE.**—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of spent

nuclear fuel or high-level radioactive waste as is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

"(d) **REPOSITORY LICENSING STANDARDS.**—The Administrator of the Environmental Protection Agency shall, pursuant to authority under other provisions of law, issue generally applicable standards for the protection of the public from releases of radioactive materials or radioactivity from the repository. Such standards shall be consistent with the overall system performance standard established by this subsection unless the Administrator determines by rule that the overall system performance standard would constitute an unreasonable risk to health and safety. The Commission's repository licensing determinations for the protection of the public shall be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1), applied in accordance with the provisions of paragraph (2), and the Administrator's radiation protection standards. The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards:

"(1) **ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.**—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the Commission determines by rule that such standard would constitute an unreasonable risk to health and safety and establishes by rule another standard which will protect health and safety. Such standard shall constitute an overall system performance standard.

"(2) **APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.**—The Commission shall issue the license if it finds reasonable assurance that for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on a probabilistic evaluation, as appropriate, of compliance with the overall system performance standard in paragraph (1).

"(3) **FACTORS.**—For purposes of making the finding in paragraph (2)—

"(A) the Commission shall not consider catastrophic events where the health consequences of individual events themselves can be reasonably assumed to exceed the health consequences due to the impact of the events on repository performance;

"(B) for the purpose of this section, an average member of the general population in the vicinity of the Yucca Mountain site means a person whose physiology, age, general health, agricultural practices, eating habits, and social behavior represent the average for persons living in the vicinity of the site. Extremes in social behavior, eating habits, or other relevant practices or characteristics shall not be considered; and

"(C) the Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(4), shall be sufficient to—

"(1) prevent any human activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

"(2) prevent any increase in the exposure of individual members of the public to radiation beyond the allowable limits specified in paragraph (1).

"(4) **ADDITIONAL ANALYSIS.**—The Commission shall analyze the overall system performance through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository.

"(e) **NATIONAL ENVIRONMENTAL POLICY ACT.**—

"(1) **SUBMISSION OF STATEMENT.**—Construction and operation of the repository shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall submit an environmental impact statement on the construction and operation of the repository to the Commission with the license application and shall supplement such environmental impact statement as appropriate.

"(2) **CONSIDERATIONS.**—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, or alternative sites or designs for the repository.

"(3) **ADOPTION BY COMMISSION.**—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954. In any such statement or supplement prepared with respect to the repository, the Commission shall not consider the need for a repository, or alternate sites or designs for the repository.

"(f) **JUDICIAL REVIEW.**—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

#### "SEC. 206. LAND WITHDRAWAL.

"(a) **WITHDRAWAL AND RESERVATION.**—

"(1) **WITHDRAWAL.**—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

"(2) **JURISDICTION.**—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

"(3) **RESERVATION.**—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

**"(b) LAND DESCRIPTION.—**

"(1) BOUNDARIES.—The boundaries depicted on the map entitled 'Interim Storage Facility Site Withdrawal Map', dated March 13, 1996, and on file with the Secretary, are established as the boundaries of the Interim Storage Facility site.

"(2) BOUNDARIES.—The boundaries depicted on the map entitled 'Yucca Mountain Site Withdrawal Map', dated July 9, 1996, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

"(3) NOTICE AND MAPS.—Within 6 months of the date of the enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

"(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(4) NOTICE AND MAPS.—Concurrent with the Secretary's application to the Commission for authority to construct the repository, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the Yucca Mountain site; and

"(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(5) CONSTRUCTION.—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

**"TITLE III—LOCAL RELATIONS****"SEC. 301. FINANCIAL ASSISTANCE.**

"(a) GRANTS.—The Secretary is authorized to make grants to any affected Indian tribe or affected unit of local government for purposes of enabling the affected Indian tribe or affected unit of local government—

"(1) to review activities taken with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of the integrated management system on the affected Indian tribe or the affected unit of local government and its residents;

"(2) to develop a request for impact assistance under subsection (c);

"(3) to engage in any monitoring, testing, or evaluation activities with regard to such site;

"(4) to provide information to residents regarding any activities of the Secretary, or the Commission with respect to such site; and

"(5) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken with respect to such site.

"(b) SALARY AND TRAVEL EXPENSES.—Any salary or travel expense that would ordinarily be incurred by any affected Indian tribe or affected unit of local government may not be considered eligible for funding under this section.

"(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

"(1) ASSISTANCE REQUESTS.—The Secretary is authorized to offer to provide financial and technical assistance to any affected Indian tribe or affected unit of local government requesting such assistance. Such assistance shall be designed to mitigate the impact on the affected Indian tribe or affected unit of local government of the development of the integrated management system.

"(2) REPORT.—Any affected Indian tribe or affected unit of local government may request assistance under this section by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from activities of the integrated management system.

"(d) OTHER ASSISTANCE.—

"(1) TAXABLE AMOUNTS.—In addition to financial assistance provided under this subsection, the Secretary is authorized to grant to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amount such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.

"(2) TERMINATION.—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

"(3) ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.—

"(A) PERIOD.—Any affected Indian tribe or affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.

"(B) ACTIVITIES.—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

**"SEC. 302. ON-SITE REPRESENTATIVE.**

"The Secretary shall offer to the unit of local government within whose jurisdiction a site for an interim storage facility or repository is located under this Act an opportunity to designate a representative to conduct on-site oversight activities at such site. The Secretary is authorized to pay the reasonable expenses of such representative.

**"SEC. 303. ACCEPTANCE OF BENEFITS.**

"(a) CONSENT.—The acceptance or use of any of the benefits provided under this title by any affected Indian tribe or affected unit of local government shall not be deemed to be an expression of consent, express, or implied, either under the Constitution of the State or any law thereof, to the siting of an interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

"(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State to oppose the siting in Nevada of an interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

"(c) LIABILITY.—No liability of any nature shall accrue to be asserted against any official of any governmental unit of Nevada premised solely upon the acceptance or use of benefits under this title.

**"SEC. 304. RESTRICTIONS ON USE OF FUNDS.**

"None of the funding provided under this title may be used—

"(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

"(2) for litigation purposes; and

"(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

**"SEC. 305. LAND CONVEYANCES.**

"(a) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after enactment of this Act, all right, title and interest of the United States in the property described in subsection (b), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Nye, Nevada, unless the county notifies the Secretary of Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Nye County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

"(b) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, and on file with the Secretary shall be conveyed under subsection (a) to the County of Nye, Nevada:

Map 1: Proposed Pahrump industrial park site.

Map 2: Proposed Lathrop Wells (gate 510) industrial park site.

Map 3: Pahrump landfill sites.

Map 4: Amargosa Valley Regional Landfill site.

Map 5: Amargosa Valley Municipal Landfill site.

Map 6: Beatty Landfill/Transfer Station site.

Map 7: Round Mountain Landfill site.

Map 8: Tonopah Landfill site.

Map 9: Gabbs Landfill site.

"(c) CONSTRUCTION.—The maps and legal descriptions of special conveyances referred to in subsection (b) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

"(d) EVIDENCE OF TITLE TRANSFER.—Upon the request of the County of Nye, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

**"TITLE IV—FUNDING AND ORGANIZATION****"SEC. 401. PROGRAM FUNDING.**

"(a) CONTRACTS.—

"(1) AUTHORITY OF SECRETARY.—In the performance of the Secretary's functions under



this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such waste or spent fuel. Such contracts shall provide for payment of annual fees to the Secretary in the amounts set by the Secretary pursuant to paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended. Subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act: *Provided*, That the Secretary shall consent to an amendment to such contracts as necessary to implement the provisions of this Act.

**"(2) ANNUAL FEES.—**

"(A) for electricity generated by civilian nuclear power reactors and sold between January 7, 1983, and September 30, 2002, the fee under paragraph (1) shall be equal to 1.0 mill per kilowatt-hour generated and sold. For electricity generated by civilian nuclear power reactors and sold on or after October 1, 2002, the aggregate amount of fees collected during each fiscal year shall be no greater than the annual level of appropriations for expenditures on those activities consistent with subsection (d) for that fiscal year, minus—

"(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

"(ii) the percentage of such appropriation required to be funded by the Federal Government pursuant to section 403.

The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that the annual fee collected under this subparagraph shall not exceed 1.0 mill per kilowatt-hour generated and sold.

"(B) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 2002, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

"(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

"(ii) the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403.

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of the fees assessed.

"(C) RULES.—The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(3) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1996 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment

of the Nuclear Waste Policy Act of 1996 pursuant to the contracts, including any interest due pursuant to such contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph on or before September 30, 2002, and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) ADJUSTMENTS TO FEE.—The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3), together with the existing balance of the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996, to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (c)(2). In the event the Secretary determines that the revenues being collected are either insufficient or excessive to recover the costs incurred by the Federal Government that are specified in subsection (c)(2), the Secretary shall propose an adjustment to the fee in subsection (c)(2) to ensure full cost recovery. The Secretary shall immediately transmit the proposal for such an adjustment to both houses of Congress.

"(b) ADVANCE CONTRACTING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) LICENSE ISSUANCE AND RENEWAL.—The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

"(i) such person has entered into a contract under subsection (a) with the Secretary; or

"(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

"(B) PRECONDITION.—The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of spent nuclear fuel and high-level radioactive waste that may result from the use of such license.

"(2) DISPOSAL IN REPOSITORY.—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

"(3) ASSIGNMENT.—The rights and duties of contract holders are assignable.

"(c) NUCLEAR WASTE FUND.—

"(1) IN GENERAL.—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear

Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

"(A) the existing balance in the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996; and

"(B) all receipts, proceeds, and recoveries realized under subsections (a), and (c)(3) subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996, which shall be deposited in the Nuclear Waste Fund immediately upon their realization.

"(2) USE.—The Secretary may make expenditures from the Nuclear Waste Fund, subject to subsections (d) and (e), only for purposes of the integrated management system.

"(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

"(A) IN GENERAL.—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

"(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

"(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund; and

"(ii) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

"(C) EXEMPTION.—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

"(d) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget annually along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

"(e) APPROPRIATIONS.—The Secretary may make expenditures from the Nuclear Waste Fund, subject to appropriations, which shall remain available until expended.

**"SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.**

"(a) ESTABLISHMENT.—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying

out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

#### SEC. 403. FEDERAL CONTRIBUTION.

"(a) ALLOCATION.—No later than one year from the date of enactment of the Nuclear Waste Policy Act of 1996, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors shall include—

"(1) an appropriate portion of the costs associated with research and development activities with respect to development of an interim storage facility and repository; and

"(2) as appropriate, interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

"(b) APPROPRIATION REQUEST.—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

"(c) REPORT.—In conjunction with the annual report submitted to Congress under section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy activities and spent nuclear fuel from foreign research reactors, requiring management in the integrated management system.

"(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

#### TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

##### SEC. 501. COMPLIANCE WITH OTHER LAWS.

"If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act in implementing the integrated management system.

##### SEC. 502. JUDICIAL REVIEW OF AGENCY ACTIONS.

"(a) JURISDICTION OF THE UNITED STATES COURTS OF APPEALS.—

"(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United

States courts of appeals shall have original and exclusive jurisdiction over any civil action—

"(A) for review of any final decision or action of the Secretary, the President, or the Commission under this Act;

"(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this Act;

"(C) challenging the constitutionality of any decision made, or action taken, under any provision of this Act; or

"(D) for review of any environmental impact statement prepared or environmental assessment pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

"(2) VENUE.—The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

"(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge or such decision, action, or failure to act.

"(c) APPLICATION OF OTHER LAW.—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

##### SEC. 503. LICENSING OF FACILITY EXPANSIONS AND TRANSHIPMENTS.

"(a) ORAL ARGUMENT.—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

"(b) ADJUDICATORY HEARING.—

"(1) DESIGNATION.—At the conclusion of any oral argument under subsection (a), the

Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

"(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

"(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

"(2) DETERMINATION.—In making a determination under this subsection, the Commission—

"(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

"(B) shall not consider—

"(1) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor to which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

"(2) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless—

"(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

"(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

"(3) APPLICATION.—The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

"(4) CONSTRUCTION.—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

"(c) JUDICIAL REVIEW.—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

"(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

"(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

##### SEC. 504. SITING A SECOND REPOSITORY.

"(a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.



"(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

**"SEC. 505. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.**

"(a) FINANCIAL ARRANGEMENTS.—

"(1) STANDARDS AND INSTRUCTIONS.—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

"(2) BONDING, SURETY OR OTHER FINANCIAL ARRANGEMENTS.—If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

"(b) TITLE AND CUSTODY.—

"(1) AUTHORITY OF SECRETARY.—The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

"(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

"(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

"(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

"(2) PROTECTION.—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

"(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decon-

taminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

**"SEC. 506. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.**

"The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant licensee personnel training programs.

**"SEC. 507. EMPLACEMENT SCHEDULE.**

"(a) The emplacement schedule shall be implemented in accordance with the following:

"(1) Emplacement priority ranking shall be determined by the Department's annual 'Acceptance Priority Ranking' report.

"(2) The Secretary's spent fuel emplacement rate shall be no less than the following: 1,200 MTU in fiscal year 2000 and 1,200 MTU in fiscal year 2001; 2,000 MTU in fiscal year 2002 and 2,000 MTU in fiscal year 2003; 2,700 MTU in fiscal year 2004; and 3,000 MTU annually thereafter.

"(b) If the Secretary is unable to begin emplacement by November 30, 1999 at the rates specified in subsection (a), or if the cumulative amount emplaced in any year thereafter is less than that which would have been accepted under the emplacement rate specified in subsection (a), the Secretary shall, as a mitigation measure, adjust the emplacement schedule upward such that within 5 years of the start of emplacement by the Secretary,

"(1) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had begun emplacement in fiscal year 2000, and

"(2) thereafter the emplacement rate is equivalent to the rate that would be in place pursuant to subsection (a) above if the Secretary had commenced emplacement in fiscal year 2000.

**"SEC. 508. TRANSFER OF TITLE.**

"(a) Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.

"(b) No later than 6 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary is authorized to accept all spent nuclear fuel withdrawn from Dairyland Power Cooperative's La Crosse Reactor and, upon acceptance, shall provide Dairyland Power Cooperative with evidence of the title transfer. Immediately upon the Secretary's acceptance of such spent nuclear fuel, the Secretary shall assume all responsibility and liability for the interim storage and permanent disposal thereof and is authorized to compensate Dairyland Power Cooperative for any costs related to operating and maintaining facilities necessary for such storage from the date of acceptance until the Secretary removes the spent nuclear fuel from the La Crosse Reactor site.

**"SEC. 509. DECOMMISSIONING PILOT PROGRAM.**

"(a) AUTHORIZATION.—The Secretary is authorized to establish a Decommissioning Pilot Program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas.

"(b) FUNDING.—No funds from the Nuclear Waste Fund may be used for the Decommissioning Pilot Program.

**"SEC. 510. WATER RIGHTS.**

"(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

"(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands.

"(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

**"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD**

**"SEC. 601. DEFINITIONS.**

"For purposes of this title—

"(1) CHAIRMAN.—The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.

"(2) BOARD.—The term 'Board' means the Nuclear Waste Technical Review Board continued under section 602.

**"SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.**

"(a) CONTINUATION OF THE NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of the Nuclear Waste Policy Act of 1996, shall continue in effect subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996.

"(b) MEMBERS.—

"(1) NUMBER.—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

"(2) CHAIR.—The President shall designate a member of the Board to serve as Chairman.

"(3) NATIONAL ACADEMY OF SCIENCES.—

"(A) NOMINATIONS.—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) VACANCIES.—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

"(C) NOMINEES.—

"(i) Each person nominated for appointment to the Board shall be—

"(I) eminent in a field of science or engineering, including environmental sciences; and

"(II) selected solely on the basis of established records of distinguished service.

"(ii) The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.

"(4) VACANCIES.—Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) TERMS.—Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.

#### "SEC. 603. FUNCTIONS.

"The Board shall limit its evaluations to the technical and scientific validity solely of the following activities undertaken directly by the Secretary after December 22, 1987—

"(1) site characterization activities; and

"(2) activities of the Secretary relating to the packaging or transportation of spent nuclear fuel or high-level radioactive waste.

#### "SEC. 604. INVESTIGATORY POWERS.

"(a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. The Secretary or the Secretary's designee or designees shall not be required to appear before the Board or any element of the Board for more than twelve working days per calendar year.

"(b) PRODUCTION OF DOCUMENTS.—

"(1) RESPONSE TO INQUIRES.—Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information that is generally available to the public as may be necessary to respond to any inquiry of the Board under this title.

"(2) EXTENT.—Subject to existing law, information obtainable under paragraph (1) may include drafts of products and documentation of work in progress.

#### "SEC. 605. COMPENSATION OF MEMBERS.

"(a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

#### "SEC. 606. STAFF.

"(a) CLERICAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical

staff as may be necessary to discharge the responsibilities of the Board.

"(2) PROVISIONS OF TITLE 5.—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) NUMBER.—Not more than 10 professional staff members may be appointed under this subsection.

"(3) TITLE 5.—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

#### "SEC. 607. SUPPORT SERVICES.

"(a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General and the Librarian of Congress shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

#### "SEC. 608. REPORT.

"The Board shall report not less than two times per year to Congress and the Secretary its findings, conclusions, and recommendations.

#### "SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for expenditures such sums as may be necessary to carry out the provisions of this title.

#### "SEC. 610. TERMINATION OF THE BOARD.

"The Board shall cease to exist not later than one year after the date on which the Secretary begins disposal of spent nuclear fuel or high-level radioactive waste in the repository.

#### "TITLE VII—MANAGEMENT REFORM

##### "SEC. 701. MANAGEMENT REFORM INITIATIVES.

"(a) IN GENERAL.—The Secretary is directed to take actions as necessary to im-

prove the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

"(b) AUDITS.—

"(1) STANDARD.—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

"(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations, engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the enactment of the Nuclear Waste Policy Act of 1996.

"(3) COMPTROLLER GENERAL.—The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

"(4) TIME.—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

"(5) PUBLIC DOCUMENTS.—All audit reports shall be public documents and available to any individual upon request.

"(c) VALUE ENGINEERING.—The Secretary shall create a value engineering function within the Office of Civilian Radioactive Waste Management that reports directly to the Director, which shall carry out value engineering functions in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects.

"(d) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

#### "SEC. 702. REPORTING.

"(a) INITIAL REPORT.—Within 180 days of enactment of this section, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

"(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than November 30, 1999, and in accordance with the acceptance schedule;

"(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary's obligation under this Act and the contracts;

"(3) a detailed description of the Secretary's contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and



"(4) an analysis by the Secretary of its funding needs for fiscal years 1996 through 2001.

"(b) ANNUAL REPORTS.—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of—

"(1) any modifications to the Secretary's schedule and timeline for meeting its obligations under this Act;

"(2) the reasons for such modifications, and the status of the implementation of any of the Secretary's contingency plans; and

"(3) the Secretary's analysis of its funding needs for the ensuing 5 fiscal years.

**"SEC. 703. EFFECTIVE DATE.**

"This Act shall become effective one day after enactment."

Mr. MURKOWSKI. I move to reconsider the vote.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

**VISIT TO THE SENATE BY THE HONORABLE HOSNI MUBARAK, PRESIDENT OF EGYPT**

Mr. HELMS. Mr. President, I present to the Senate of the United States, the distinguished and honorable President of Egypt, Hosni Mubarak.

[Applause.]

**RECESS**

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate stand in recess in honor of President Hosni Mubarak, so Members might meet our friend from Egypt.

There being no objection, the Senate, at 5:21 p.m., recessed until 5:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

**PRIVILEGE OF THE FLOOR**

Mr. HATFIELD. Mr. President, I ask unanimous consent that Dr. Jonelle Rowe, a fellow on Senator FRIST's staff, be granted floor privileges today, July 31, 1996, during the consideration of the fiscal year 1997 Transportation appropriations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

**DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997**

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DORGAN. Mr. President, I had given notice that I would offer one additional amendment. I say to the ranking member and the manager that I will not offer that amendment, but I do want to speak for just a couple of minutes while we are waiting for another Senator to come to offer an amendment. I think that will probably be good news to them because they want to move the bill along, and they do not want me to offer another amendment.

I want to describe, as you are waiting for Senator BAUCUS and others, what I was going to offer the amendment on. I want Members of the Senate to understand that we are going to be dealing with this issue in a day or so.

Here is the issue. It is very simple. It is something most Senators have not heard of, but it is something that went on late last night here in the Senate in a deal between the Senate and the House, I am told. There is a bill that is traveling with the minimum wage that is called the Small Business Job Protection Act that gives some benefits to small business. Of course, it is not just benefits for small business. Included in that bill was a provision repealing something called section 956A of the Internal Revenue Code.

What is 956A? It is a provision of the law that was passed in 1993 to close a corporate tax loophole by which corporations move investments and U.S. jobs overseas, and avoid paying taxes here at home. In 1993, that loophole was closed by something that was proposed by President Clinton and supported by the Congress: 956A. It says that you cannot start a manufacturing plant overseas, earn a lot of money, and pay no taxes back home.

My point is that in 1993 a tax loophole was closed. It had benefited some of the largest corporations in the country. It said to them, if you move your investments and jobs overseas, we will give you a special tax break that is not available to small businesses operating in this country. And they moved their jobs overseas. They earn income overseas and pay no taxes in this country on income. They invest it in passive assets abroad in foreign countries, and pay no income tax here.

We closed that tax loophole. Guess what? There are some folks in this

Chamber and the House that have been working late at night to reopen that loophole. I know it is only a few hundred million dollars, but it is a few hundred million dollars in favors to some of the largest corporations in this country.

I have worked for couple of years trying to get some money to deal with Indian child abuse—a million dollars, two million dollars. I have told my colleagues before that I have been in an office where there is a stack of papers that high on the floor of complaints of sexual abuse and violence against children that have not even been investigated because there is not enough money. We do not have enough money to do things like that. We are simply short of money.

But when it comes to late night in this place, in the conference, there is enough money to give a \$235 million tax break to corporations and say, if you want a tax break to move your jobs overseas, we will sweeten it up; we will give you a big, juicy tax loophole.

That is going to be put in the bill in conference. I am told the deal was struck last night between the chairmen of the two committees working late last night.

I venture to say that there is not another Member of the Senate who knows about it, and it probably does not mean a lot to some. It will mean something to those people who are going to lose their jobs in this country because we make it juicier for corporations to move jobs overseas. We decide to give a huge tax break to firms which move jobs overseas. And it will mean that some people in this country are going to lose their good-paying jobs. It is going to mean that we are out several hundred million dollars because we now have a new tax break that we thought we had closed in 1993. It is going to mean that small businesses that operate in this country are going to be forced to compete with large multinational firms at a greater disadvantage.

This is coming to the Senate, and it is stuck in a bill called the Small Business Job Protection Act. It ought to be against the law to use a title like that when it includes provisions like this.

You are going to hear more from me if it is true that the conference has accepted this and is going to bring it to the floor of the Senate. I am told a deal was made last night.

I could name some large corporations on the floor—but I will not at this moment—that have been moving around this town saying, "Reopen, please, for us this tax loophole. We want to benefit from it. We want to move our jobs overseas. We want to invest our money overseas. Reopen this loophole."

We have folks jumping for joy to see if they cannot accommodate those who want another tax loophole done in the dead of night without the knowledge of

people in this Chamber and the other Chamber. Most of them do not know much about 956A—and done with hundreds of millions of dollars at a time when we cannot get \$0.5 million or \$1 million to deal with critical issues of child abuse on Indian reservations. They cannot even get them investigated. But there is plenty of money to do this.

I will tell you, if I sound upset about this stuff, I am, because this sort of thing should not go on in this town. If you want to debate restoring a tax loophole, then let us debate it on the floor of the Senate. We repealed it 3 years ago. Now the folks want to go out and open it up again. Let us debate that on the floor of the Senate and see if you get one vote.

How many want to stand up in the Senate and say, "Yes, we would like to restore a new tax loophole. Count us in. We want to go home and brag about creating a new tax loophole which benefits some of the biggest corporations in this country so they can move their jobs overseas?"

I want to know one Senator who wants to go home and brag about that in August. I bet there is not one who would do it, not one who would want to vote on this, so you do not have to vote on it because it is done under cover of darkness, slipped in a bill that is called the Small Business Job Protection Act. You talk about mismanagement.

There is nothing about small business job protection in any of this. This is not job protection—shipping jobs overseas. It is not small business when you are talking about the biggest businesses in the country.

So I would say if tomorrow this conference report comes back to the floor of the Senate, you are going to hear a lot about this, and I am going to ask: Who is the person that said, "Count me in, count me in at a time when we are tightening our belts wanting to lead the charge to open up a new tax loophole. Sign me up for that"? I want to find the Member of the Senate or the House who says, "Yes, that is me. That is what I stand for," because I think this is an outrage.

I think that there are a lot of people who think they can do it simply because if they do it in conference, we do not get a chance to vote on it separately. Do you know something? It was not put in the Senate bill. They were going to put it in the Senate bill, but they did not do it because I think they knew I was going to force a vote on it. So they put it in the House bill and packaged up a rule so they do not have to vote on it.

The result is that nobody in conference who tries to push this sort of sweet deal—so that big business move jobs overseas—nobody has to vote on it. So they get the job done for their friends worth hundreds of millions of dollars and do not have to vote on it,

therefore, and do not have to go home and raise their hand and say, "It was me. I am the one who stood for spending several hundred millions opening up a new tax loophole that benefits large profitable corporations."

I just urge that if this deal is not done—I am told it was done last night—if it is not done, rethink it, because somebody is going to live with the consequences, and somebody is going to have to stand up and say, "I am the one who believed we ought to open up new tax loopholes."

That is not what we ought to be doing. We ought to be closing tax loopholes.

We ought not be doing things to ship jobs overseas. We ought to keep jobs at home.

You talk about a perversion of constructive thought about economics. This is a perversion.

So I will not offer the amendment. I was going to offer a motion to instruct conferees. I do not think at this moment that is something that will accomplish what I want. I guess what I would like to do is simply serve notice to Members of the Senate that if there is a vote in conference on this, I hope conferees will stand up and be counted.

If this comes to the floor in this bill, I hope it comes to the floor in a circumstance where we can have a good aggressive fight about it. I know they are going to wrap it up in conference and tie the bow and try to jam it through here so we do not have a chance to discuss this, but it is not going to go through here without some of us asking questions: For whom is this done? Who does it benefit? Who did it? Why did they do it? And how on Earth do they think this benefits this country if you are concerned about jobs and opportunity in this country?

Mr. President, I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from North Dakota.

Despite the fact that I heartily agree with him, I hardly think that there are many in this Chamber or many across the country who would think it is a good idea to facilitate the exportation of jobs. That is about the silliest thing we can do, and, frankly, I think it has hurt America severely by providing ease of transportation, transmission, and relocation of jobs that used to be in America that we thought were relatively menial, low-skilled jobs that today would be very nice to have in our country.

The Senator's point is an excellent one, and I regret that we at this point cannot accommodate him, but I think the message is clear to those who are going to be on the conference committee that they ought to pay attention because it will be remembered for a

long time to come if they ignore the opportunity to cut that flow.

I thank the Senator very much.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, momentarily I am going to be offering an amendment to correct a mistake the Treasury Department and Department of Transportation made in calculating allocation of highway funds.

I see my very good friend from Virginia is in the Chamber. He is a very valuable member, ranking member of the authorizing subcommittee and wishes to make a statement on this, and I should like to yield to my good friend from Virginia, Senator WARNER.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I know full well the Senator did not mean to call me ranking member. I do believe we have had a small matter of an election, and I am now the chairman.

Mr. BAUCUS. Excuse me. I am sorry.

Mr. WARNER. In any event, the distinguished Senator from Montana and I have worked together on many, many things over many, many years, and we will continue, in all probability, to work together.

The point I wish to make is that when the Senator from Montana has the opportunity to present the amendment to the Senate, I wish to be recorded in opposition for the following reasons. There is nothing that I have witnessed in my period here in the Senate that is more divisive than the highway allocation formulas.

Mr. President, I do not know—I think I do know, but for the moment I do not have before me the documentation—who devised this formula years ago, but I know it requires many, many bureaucrats and many, many pages of reference material for even those in the Department of Transportation responsible for this allocation formula to figure it out.

I think it is incumbent upon the Congress next year as a part of the ISTEA reauthorization, in which I hope to play an active role, to revise this formula so: First, it is simple and can be understood and all States know the various factors that are taken into consideration to make the allocation; and second, that it is fair.

Right now there are donor States and donee States. The donor State is a State in which the receipts from sales of gasoline in that State go to the highway trust fund and then the allocation from the highway trust fund comes back and that State gets a sum less than the total of the receipts paid by its constituents and such others that may avail themselves of the fuel in that State. Now, donees get a greater sum than the total of their revenues from the sale of gasoline as a Federal



tax. So the time has come to reconcile this ancient formula with reality and with fairness.

What is the present problem? The Senator from Montana I think quite properly brings before the Senate the fact that someone—and I am not pointing an accusing finger of malice aforethought—misapplied a regulation, a rule or something.

As a result, Mr. President, we have 19 States, my State being one of the 19, which received an incorrect sum of money. In the case of Virginia, it is \$10,488,000, a sum of money which is greater than Virginia was entitled to under the complicated formula to which I have referred had that formula been properly administered by the unknown bureaucrat. And 18 other States are in a similar situation—Arizona, Arkansas, California—\$65 million for California—Colorado, Indiana, Louisiana, Massachusetts—I will not go on. They are here. I will put them in the RECORD. I so ask unanimous consent. I will name Oregon, Mr. President, the State of the distinguished chairman of the committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPARISON OF PROPOSED FY 1997 OBLIGATION LIMITATION BASED ON ESTIMATED FY 1997 APPROPRIATIONS

States	90 percent of payments estimated @ \$2.68	90 percent of payments estimated @ \$1.58 + \$135M	Difference
Alabama	316,954	317,760	806
Alaska	174,987	184,165	9,178
Arizona	238,340	233,851	(4,489)
Arkansas	196,398	189,800	(6,598)
California	1,490,847	1,424,889	(65,958)
Colorado	195,996	195,439	(557)
Connecticut	309,047	324,870	15,823
Delaware	67,550	71,008	3,458
District of Columbia	72,833	76,652	3,819
Florida	692,919	695,436	2,517
Georgia	511,466	528,744	17,278
Hawaii	106,597	112,055	5,458
Idaho	94,626	99,588	4,962
Illinois	592,113	604,958	12,845
Indiana	380,999	362,901	(18,098)
Iowa	178,942	181,124	2,182
Kansas	178,921	188,082	9,161
Kentucky	282,885	293,063	10,178
Louisiana	258,683	243,528	(15,155)
Maine	79,641	83,564	3,923
Maryland	260,348	258,343	(2,005)
Massachusetts	597,481	628,617	31,136
Michigan	488,272	463,353	(24,919)
Minnesota	247,475	228,404	(19,071)
Mississippi	194,751	193,413	(1,338)
Missouri	389,783	384,254	(5,529)
Montana	132,763	139,726	6,963
Nebraska	121,326	127,538	6,212
Nevada	99,084	99,599	515
New Hampshire	74,635	78,457	3,822
New Jersey	417,115	438,472	21,357
New Mexico	147,746	155,494	7,748
New York	912,361	959,076	46,715
North Carolina	427,763	420,165	(7,598)
North Dakota	88,859	93,409	4,550
Ohio	598,477	558,927	(42,550)
Oklahoma	246,635	245,416	(1,219)
Oregon	195,536	196,960	1,424
Pennsylvania	655,910	637,515	(18,395)
Rhode Island	74,195	78,086	3,891
South Carolina	248,779	258,338	9,559
South Dakota	97,350	102,456	5,106
Tennessee	363,093	353,238	(9,855)
Texas	1,132,043	1,105,498	(26,545)
Utah	112,946	115,506	2,560
Vermont	68,516	72,024	3,508
Virginia	381,449	370,961	(10,488)
Washington	283,047	297,892	14,845
West Virginia	137,862	144,921	7,059
Wisconsin	286,718	279,676	(7,042)
Wyoming	97,018	101,986	4,968
Puerto Rico	71,920	75,603	3,683
Subtotal	16,072,000	16,072,000	0

COMPARISON OF PROPOSED FY 1997 OBLIGATION LIMITATION BASED ON ESTIMATED FY 1997 APPROPRIATIONS—Continued

States	90 percent of payments estimated @ \$2.68	90 percent of payments estimated @ \$1.58 + \$135M	Difference
Administration	532,000	532,000	0
Federal lands	426,000	426,000	0
Allocation reserve	620,000	620,000	0
Total	17,650,000	17,650,000	0

Note: Estimated apportionments prepared by HPP-21

Mr. WARNER. Now, my position is that this correction should be done in the course of our consideration of the revision of this formula next year during ISTEA. Owing to the clear conscience of the distinguished chairman of the committee, the distinguished ranking member from New Jersey, the distinguished ranking member of the Environment Committee, our chairman, and indeed backup from well-informed staff, we decided not to do this amendment last night—I among others objected—as a managers' amendment—and I commend the managers of this bill for not trying to do this—which results in a considerable loss of money to 19 States.

The Senator has every right to do it as an amendment to the pending bill. Technically, I suppose it is legislation on this bill. I intend to vote, however the vote is taken, in opposition because I think the better course of action is to deal with this correction next year. These sums of money will not affect the ability of the several States, 50 of them, to go forward with their highway programs. My State, although it has been told it is going to get the \$10 million, has made certain plans to expend this \$10 million, and it will require a certain perturbation in the planning to take \$10 million out of the budget for this year. And 18 other States will similarly be subjected to deducting from their highway budgets this sum of money. So that, to me, is the more equitable and more fair way to deal with this question. That would enable all the other Senators, many of whom are learning, presumably for the first time at this moment, knowledge of this problem.

The other reason I feel it should be done this way, and with due respect to the distinguished ranking member of the committee, the Senator from Montana, is we do not have before us—at least I do not—any letter from the Department of Transportation explaining to Senators exactly how this happened. Perhaps the Senator from Montana can articulate the problem in more detail. But it seems to me the Senate should have before it certain documentation from the Secretary of Transportation explaining how this happened and the need for it to be corrected by the Congress. It is apparent that the Secretary of Transportation has made the decision he cannot do it administratively within the executive branch, but it requires the Congress to act.

So I have concluded my remarks and, at such time as the distinguished Senator from Montana wishes, he can put the amendment forward. I hope other Senators will find the opportunity to speak on it. I yield the floor. I thank my colleague.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I appreciate the statement the chairman of the Subcommittee on Transportation of the Environment and Public Works Committee made. I understand the Senator's position, namely that although a mistake is made, and there is not anybody who disputes that a mistake was made, the point is the mistake could be corrected next year when Congress takes up reauthorization of the highway bill, the so-called ISTEA.

The problem with that is very simple. First of all, this is a mistake. This is not a formula question. When ISTEA comes up next year, this Congress will deal with the formula under which the highway funds are disbursed. This is not a formula question—not a formula question. This is correcting an administrative error the Department of Transportation and, more precisely, the Department of Treasury made. It is a simple correction.

I might also say the mistake that was made, and nobody disputes the mistake was made, is not a donor-donee question. The mistake distributes the dollars inappropriately to some States and does not distribute dollars inappropriately to other States, irrespective of the donor-donee question. This has nothing to do with donor-donee issues. It has nothing to do with the formula.

One more point which I think is even more salient is this. The States in question here would not receive this money, if the mistake is not corrected, until fiscal 1997. So they are not going to be receiving any money this year, calendar 1996. They are not going to be receiving any money next year until after the fiscal year begins on October 1, 1997. So this is the appropriate time to correct the mistake, that is, before States would otherwise receive their money. It is a lot easier to correct a mistake before a State or somebody receives money than it is afterward. I know full well the States that receive their money, if they were to receive their money incorrectly next year, they are not going to be very likely to give it back.

I think, therefore, for all those reasons, the appropriate place to correct the mistake—nobody disputes the mistake was made—is right now. Just do it quickly and easily. Then, next year, this Congress will engage in a full battle royal, I know, over the allocation of highway funds.

For those reasons, I think this is more appropriate that the correction be made here and now, simply, rather than putting it off to next year.

Mr. HATFIELD. Will the Senator yield?

Mr. BAUCUS. I am glad to yield to the chairman of the Appropriations Committee.

Mr. HATFIELD. I discussed this matter with the Senator from Virginia, and I believe the Senator is willing to enter into a time agreement on this amendment of 1 hour, equally divided.

Mr. BAUCUS. Fine.

Mr. HATFIELD. I ask unanimous consent an hour limitation be given to the Baucus amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, we are going to be waiting for a few minutes for other Senators who wish to speak to arrive. I would like to take a few minutes during that wait to lend my support to the amendment that will be offered by the distinguished Senator from Montana. I think it is well-intentioned, and I think the amendment is fair.

The one thing I want to be certain of is that this amendment is not going to be perceived as a formula fight, because that should not be. This is a correction. It corrects the fact that the Department of Treasury misinterpreted the revenue reports that were put into a new format. The unfortunate result is that the Treasury Department grossly overstated the amount of gas tax receipts to the highway trust fund during 1994.

This error is acknowledged by the Treasury Department and by the Federal Highway Administration. Unfortunately, the FHWA is required by law to base a certain category of highway fund allocations on the Treasury's formal estimates, whether or not they are correct.

So, what the Baucus amendment seeks to do is correct the allocations made as a result of Treasury's error. And the amendment, I must say to my colleagues who were in the Chamber or who might hear us, the amendment will not deny any State the full 90 percent of the payments they are due through the Federal aid to highways formula program. What this amendment will do is to set these payments at 90 percent of what the States actually paid, rather than 90 percent of the Treasury's erroneous estimates.

We heard from the distinguished Senator from Virginia about the interest that he and the Senator from Montana have in terms of examining the formula. We will have a chance to do that, I assure you, at length, I believe. But we ought not to try to do it here, and that is not what is being attempted. Unfortunately, the impact of correcting this mistake results in certain States getting more and others getting less than they would otherwise receive if this correction were not adopted.

When reviewing this amendment, I hope that the Members will keep in mind that the bill before us provides an increase of \$100 million in the overall obligation limit for the Federal Aid Highway Program, from \$17.55 billion to \$17.65 billion, a \$100 million increase. This increase is going to help all States in meeting their transportation needs. While it is unfortunate that the legislation is required to correct this mistake, the Federal Highway Administration assures us that absent this bill language, the Secretary does not have the administrative authority to correct these highway allocations and bring them into conformity with what we now know to be the actual gas tax receipts.

I hope our Members will support this amendment. It is the right thing to do; it is the fair thing to do. The amendment is not an attempt to pick anyone's pocket in the dark of night.

Mr. President, I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Montana.

#### AMENDMENT NO. 5141

(Purpose: To require the calculation of Federal-aid highway apportionments and allocations for fiscal year 1997 to be determined so that States experience no net effect from a credit to the Highway Trust Fund made in correction of an accounting error made in fiscal year 1994)

Mr. BAUCUS. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS] proposes an amendment numbered 5141.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title III, insert the following:

#### SEC. 3. CALCULATION OF FEDERAL-AID HIGHWAY APPORTIONMENTS AND ALLOCATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), for fiscal year 1997, the Secretary of Transportation shall determine the Federal-aid highway apportionments and allocations to a State without regard to the approximately \$1,596,000,000 credit to the

Highway Trust Fund (other than the Mass Transit Account) of estimated taxes paid by States that was made by the Secretary of the Treasury for fiscal year 1995 in correction of an accounting effort made in fiscal year 1994.

(b) ADJUSTMENTS FOR EFFECTS IN 1996.—The Secretary of Transportation shall, for each State—

(1) determine whether the State would have been apportioned and allocated an increased or decreased amount for Federal-aid highways for fiscal year 1996 if the accounting error referred to in subsection (a) had not been made (which determination shall take into account the effects of section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1921)); and

(2) after apportionments and allocations are determined in accordance with subsection (a)—

(A) adjust the amount apportioned and allocated to the State for Federal-aid highways for fiscal year 1997 by the amount of increase or decrease; and

(B) adjust accordingly the obligation limitation for Federal-aid highways distributed to the State under this Act.

(c) NO EFFECT ON 1996 DISTRIBUTIONS.—Nothing in this section shall affect any apportionment, allocation, or distribution of obligation limitation, or reduction thereof, to a State for Federal-aid highways for fiscal year 1996.

(d) EFFECTIVE DATE.—This section shall take effect on September 30, 1996.

Mr. BAUCUS. Mr. President, this is a very simple technical correction amendment. Very simply, it corrects a mistake that the Department of the Treasury made. The administration tells us, incredibly, they need legislative authority to correct the mistake. This amendment simply does that legislatively, it corrects that mistake.

Nobody disputes that a mistake was made—nobody. The administration admits it, and the Senators who have spoken on this issue also admit it was a mistake.

What was the mistake? The mistake is very simple. Essentially, in 1994, the Treasury failed to credit the Highway Trust Fund with about \$1.5 billion, an administrative error, a bureaucratic error. The Treasury then corrected that error in 1995, credited the Highway Trust Fund with the 1994 mistake, that is, the \$1.5 billion and also continued to collect revenues in 1995, as they should.

The problem is the extra bump, the additional revenue in 1995, that is not only the revenue to be collected properly in 1995 but also the additional \$1.5 billion credit because the mistake was made in 1994, that additional bump skewed the formulas, because the formulas are based upon the revenue that was received in 1995; that is, the formula's distribution for future years is based upon the 1995 receipts.

The Department of Transportation has written us a letter saying that they cannot correct this mistake administratively and cannot, by their own administrative procedures, correct this error. They say it has to be made by



legislation. It is a pure and simple error, pure and simple mistake. I think it is appropriate at this time to correct the mistake.

I might say, Mr. President, this is not a donor-donee question. This has nothing to do with the claim that some States have that they are so-called donee States, that is, their citizens are contributing more dollars in gasoline taxes in the Highway Trust Fund than they are receiving in highway formula distributions. This is not that issue. In fact, the mistake that the Treasury made results in a misallocation which is totally independent of the donee-donor issue—totally independent; it has nothing to do with it.

I remind my colleagues who might think this is an allocation question, that this might be, "Oh, here we go again, one of those battles where States are trying to get more money for themselves," this is not that issue.

We will have an opportunity to deal with that question next year. Why next year? Because next year the Congress is due to reauthorize the highway bill, ISTEA. The States have been dealing with the formula under ISTEA for the past several years. The last ISTEA was passed in 1991. Here we are in 1996. The next ISTEA 6 years later will be passed in 1997. That is the opportunity and the place to figure out what the proper formula is in distribution of highway funds.

There will be a lot of good arguments made by a lot of Senators as to what that formula should be. A lot of factors go into it. Obviously, population density, miles traveled, population growth—a whole host of factors. And next year the Congress will dig down deep, try to figure out which factors, which indicators make the most sense, and we can deal with that issue then.

That is the time, next year, to deal with the formula. It certainly is not here on the floor of the Senate at the end of July, this is not the time to deal with the highway allocation formula. This is not a formulation, this is simply correcting a mistake which everyone agrees was a mistake and should be corrected.

Some might ask, "Gee, why don't we take up this mistake and correct this mistake next year when we take up the highway bill?" The answer to that is very simple, Mr. President. It is this: The maldistributions, the unjust-enrichment distributions that will be allocated under this mistake will not occur this year in 1996, they will occur in the next fiscal year, 1997. So those States who unjustly are enriched by a clerical bureaucratic mistake will not be receiving any funds until after October 1 of next year, 1997.

So now is the time to correct the mistake; that is, before States receive money they should not receive and before States do not receive money that they should receive. Now is the time to correct the mistake.

Sure as we are here tonight, Mr. President, we know next year after October of 1997—and ISTEA will certainly come up later than October of next year, that is the new highway bill as we deal with the new allocation formula—States are not going to want to give back money they improperly receive. They already will have received the dollars. So now is the time in 1996 to correct the mistake so States are in a lot better position to deal with what is proper here.

I might say, too, Mr. President, that 19 States benefited by this mistake; 31 States were injured, harmed by this mistake. The amendment I am offering simply returns us to the status quo. It does not tilt the formula any way, one way or the other. It is totally a restoration of the status quo; that is, a total correction of a mistake that was made, which means under this amendment 31 States will be better off, 19 States will be worse off, compared with where they would be if the mistake were not corrected. The amendment here simply again is to correct the mistake. I would like to read the names of the States, Mr. President, which will benefit under this amendment, that is, returned to the status quo, that is, States which will then be receiving what they are supposed to be receiving under the ISTEA bill, the highway bill. Here are the States: Alabama, Alaska—so if you are one of these States, you are a State that is being unjustly, unfairly harmed by a bureaucratic error. This amendment would add dollars back to correct that mistake so we are back to the status quo.

Again: Alabama, Alaska, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, and Wyoming. I might also add, Puerto Rico would be in that list as well.

Very simply, I will sum up, Mr. President, by saying this is an attempt to correct a mistake. Everyone admits it is a mistake. This is not a donee-donor question. Now is the proper time to correct the mistake because funds have not yet been allocated. They will not be allocated—under the mistake—until 1997, fiscal 1997. That is beginning October 1 of next year.

So now is the time to correct it. The issue of how we allocate disbursements should be addressed when we take up the highway bill next year. I have given the names of the States that will be benefited under this amendment. Again, they are States who are harmed by the mistake but to be returned to the status quo. Thirty-one States in that category.

Mr. President, I see the chairman of the committee, my very good friend,

JOHN CHAFEE on the floor. And he also supports this amendment for the correction for the States. I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I support the amendment by the ranking member of the Senate Environment and Public Works Committee, the distinguished Senator from Montana.

Mr. President, the amendment by the Senator from Montana corrects an accounting error made by the Department of the Treasury in 1994.

There may be some confusion as to whether under this amendment States will receive full credit for contributions made to the highway trust fund. Under the Baucus amendment the States will receive full credit for all contributions made to the highway trust fund but they will receive that credit in the year that they were actually collected rather than when they were recorded on the Treasury ledger.

I would like to emphasize that this is not an attempt to rewrite the highway funding formula under the so-called ISTEA, the Interstate Transportation Act. This is not a highway trust fund formula amendment. And I do think it is very, very unfortunate that the clerical error has resulted in confusion, and indeed understandable irritation for Members of this body. Frankly, Mr. President, I greatly wish it had never occurred so that we would not be here trying to straighten things out.

I realize that some Members of this body believe that the formulas that distribute highway funds are not fair or appropriate. And that is a legitimate concern. Members will have their chance to make their case for changes in the formula next year when we reauthorize the highway program. The Environment and Public Works Committee plans to commence hearings on the reauthorization of the so-called ISTEA in September of this year. We will continue those hearings next year. We want to get on with this bill. We have to get on with it next year. At that time we definitely will have arguments over the formula and what should go into it.

The Senator from Montana ticked off some of those items. For example, should we count the amount of interstate highway mileage, the State's population, the miles driven, the amount of highway trust fund contributions, the number of deficient bridges? All of those are legitimate things to consider when we deal with the formula.

That will be a very healthy debate, I can guarantee everybody here, because you have donor States who put in more than they get back and you have donee States that receive more than they put in. Legitimately, the States that put in more are distressed. And the States that put in less think that, well, this is a National Highway System so you

should not get back exactly what you put in. That is OK. We will debate that vigorously.

But I do believe that it is unfortunate and not appropriate, when we are trying to straighten out a bureaucratic error, to change the current formula that has been agreed to, was agreed to by Congress in 1991. The distribution of funds in the highway program structure are issues that must be debated on the merits, as I said, when we reauthorize the basic legislation.

Some would say, "Well, OK, if you want to straighten out this problem, wait until next spring when you deal with the highway reauthorization. Why do we take it up now?" We are taking it up now because the problem that we are talking about will be compounded if we wait. Now is the time, difficult though it might be. Some might say, "Oh, well, in the list that the Senator from Montana read off, Rhode Island will get back some money that they should have gotten, and others will have to restore some of the extra money that they received." As I say, we wish that all had not occurred. But if we wait, the problem, as I say, will become more difficult.

I would like to raise, Mr. President, a concern regarding the public perception of this issue. Failure to approve the amendment by the Senator from Montana will mean that an accounting error will generate more than \$1 billion in false spending authority. This situation obviously will be difficult to explain to taxpayers when they are concerned about reining in Federal spending. Moreover, unless it is corrected, this error will create the image of an irresponsible Federal Government which cannot correct an error. So I hope we will support this amendment and get on with it, difficult though it might be. I thank the Chair.

Mr. GRASSLEY. Mr. President, I rise in support of the amendment being offered by Senator BAUCUS, and my colleagues Senator CHAFEE and DOMENICI. Due to the error by the Treasury Department, my home State of Iowa stands to lose \$2,182,000 from the highway trust fund. This amendment would correct the Treasury Department's error, restoring the money.

I understand that the Treasury Department did not correctly credit \$1.6 billion to the highway trust fund in fiscal year 1994. The Treasury then corrected this error in fiscal year 1995. However, by not correctly attributing the funds to fiscal year 1994, the Treasury action is adversely affecting the distribution of highway funds to 31 States in fiscal year 1997. This is unfair. These States are being unfairly penalized through no fault of their own. They are being penalized by an error by the Treasury Department.

I urge my fellow Senators to join the Senator from Montana, myself, and the other cosponsors of this amendment to

correct this error. It is the right thing to do.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I am somewhat puzzled by this debate because what has happened is that the error has been corrected. No one is saying that there is a problem in the allocation in the bill before us. What we are seeing here is an effort to use an appropriations bill to try to go back and impose a change on a formula which this year is fair to correct a problem which it is asserted existed last year.

Let me remind my colleagues of how we came to this point. The apportionment of highway dollars to States is based in part on the actual motor fuel taxes collected in the State. And the law says that the most recent data available will be used.

In fiscal year 1996, the most recent data available was an estimate of fiscal year 1994 collections. The Secretary of the Treasury certified that that was the data that was available. On the basis of that data and the law, an allocation was made. The Department of the Treasury was late in reporting the 1994 actual data collection to the Department of Transportation and therefore they relied on the data that was available at that time. What we are being asked to do now is to go back and change a formula which has already been adjusted.

In listening to our colleague from Rhode Island, one would get the view that the current appropriations bill before us has an unfair allocation of funds under ISTEA or an allocation which is based on old data. But unless I am wrong—and I would be happy to be corrected—that is not the case.

No one is asserting that this appropriations bill in any way is in error in allocating funds. What is instead being asserted is, that since the most recent data available when this was done last year was the estimated 1994 data, which therefore under law was used, that if the actual 1994 data had been available, that the funding formulas would have generated a different result. Are we, Mr. President, every year, going to go back and second-guess the formula? Or are we going to follow the law?

Now we have one of these things that, from time-to-time, happens, where by going back and changing the base-year data, more States benefit than lose. The bottom line is that no one here has asserted that the Secretary of the Treasury or the Secretary of Transportation did not comply with the law. The law says that the allocation will be based on the most recent data available. It was based on the most recent data available last year.

No one asserts that the current formula is wrong. But what is being as-

serted is that, using data that was not available last year, we could go back and reallocate these funds and take an allocation which this year no one disputes is a fair allocation, but we would go back and take money away from States in a formula that no one argues is unfair, to basically allocate funds, not according to the law last year, since the estimated 1994 data was the most recent year available, but according to how it would have been allocated if data had been available which was not available.

Here is my point: I think you can argue endlessly on these things, but I do not think this is the place where the argument should occur. This is an appropriations bill. Obviously, what we have here is an attempt to change the allocation. The amendment changes an allocation, which no one disputes as being valid, to try to reallocate funds from last year.

It is true that nobody here would dispute that if the actual 1994 data was available last year, instead of the estimate, the allocation might have been different. But it was not. The law says very clearly that the allocation is based on the most recent data available. I believe if we are going to deal with this issue, we need to deal with it when we are reauthorizing ISTEA, and we need to deal with it not just for this year but we ought to set out a principle. I think it makes absolutely no sense to simply go back and say, if data had been available then, which was not available, the allocation might have been different, and therefore take a year where no one disputes the allocation and reallocate the money, because 31 States will benefit and only 19 States will lose. I hope we will table this amendment because it clearly is legislating on an appropriations bill. I think if we start opening these formulas up to this kind of debate, it is going to make it very, very difficult for us to be able to pass these appropriations bills. I am not at this point ready to give a time limit on this bill. I think we should vote on tabling it, and then I think we will want to look at second-degree amendments.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I want to enter into the RECORD a couple of letters from the administration which document that a mistake was made. The first is a memorandum from the Department of Treasury. I would like to read several portions of it without reading it in detail.



In fiscal 1994 an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes against the Highway Trust Fund. This misallocation of excise taxes was corrected in fiscal year 1995.

Another portion reads:

This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

I ask unanimous consent that this document be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,

Washington, DC, July 31, 1996.

Memorandum to: Senator John H. Chafee, Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.

From: Linda L. Robertson, Assistant Secretary (Legislative Affairs and Public Liaison).

Subject: Correcting the misallocation of excise taxes between the highway trust fund and the general fund.

In Fiscal Year 1994, an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes, against the Highway Trust Fund (HTF). This misallocation of excise taxes was corrected in Fiscal Year 1995.

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services (FMS) by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between amounts initially transferred and "actual" quarterly liability. This adjustment is referred to as the "Correcting Adjustment."

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed. This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

Mr. BAUCUS. Mr. President, very clearly, the Department of Treasury admits the error, a \$1.590 billion miscalculation. To review this, so that Senators understand how this procedure works, by law, there is a 2-year time lag, which means that because a mistake was made in 1994, by definition, 1996 allocations were not made in advance of what the formula would

otherwise require, because in 1994, almost \$1.6 billion was not credited to the highway trust fund. In 1996, the formula was based upon the amount that is in the 1994 account. Since the 1994 account was deficient by \$1.6 billion, by definition, States were not overpaid in 1996. So no States were overpaid in 1996.

Again, as I said, by law, the allocation is made 2 years after the account is so-called certified. Well, in 1995, after the mistake was discovered, not only were normal 1995 accounts received from States and the highway trust fund credited with the usual amount it should have been, but in addition to that, the mistake—the \$1.6 billion—was added on top of the 1995 account, which overstated 1997 payments. So the correction we are trying to make here today is a combination of 1994 and 1995, the underpayment in 1994, as well as the overpayment in 1995, which determine the State allocations in fiscal years 1996 and 1997.

I might add, Mr. President, I have another letter from the Department of Transportation—actually, from the Federal Highway Administration, signed by Rodney Slater, Administrator.

It states in part that it is unable to administratively make the correction. I can read portions of that, but Senators may read the letter. It is a little bit technical and bureaucratic. But the long and short of it is that they admit the mistake and explain what would have happened had the mistake not occurred. They state that it has to be corrected by legislation.

I listened with great curiosity to the arguments of the Senator from Texas. He, in a sense, was saying that because the 1994 allocation was determined as it was, and the mistake was made, we should close our eyes and be blind to any mistake that might have been made. He is saying, by law, the 1996 allocation should be determined by what the 1994 receipts are, and a mistake was made, but do not look at the mistake because that is what the law said in 1994.

Mr. President, we are only saying that everyone admits it was a mistake. The Department of Treasury documents it was a mistake, as does the Department of Transportation. Senator WARNER was on the floor not long ago and also admitted the mistake.

I guess the real question is, if it is a mistake, do we correct it or not? That is the issue. Very simply, if a mistake is made, should it be corrected, or should it not be corrected?

I submit, Mr. President, to ask the question is to answer it. Of course, we should correct the mistake. That is what normal, civilized human beings do—correct mistakes.

The other argument I have heard is, well, gee, even if a mistake was made, don't correct it now, correct it next

year. Well, we all know, Mr. President, one of the greatest problems that we as human beings have is procrastinating, putting off what we can do now.

Here we are tonight. Let us correct this mistake. We could, I suppose, take it up next year when ISTEA comes up. But ISTEA is the highway bill. The highway bill battle is to determine what the allocation should be. We are not arguing what the allocation should be. That is an argument that Senators will engage in next year, in 1997.

I might also say—repeating myself—if we don't correct the mistake now, next year the States will receive dollars they should not receive, and they are not very likely to want to send the dollars back, even though they know they should.

We are really put to a test here, Mr. President. The real test is: Are we going to live up to our word or not? I might say, particularly, as Senators, that is really the issue here. Sure, if a State is unjustly enriched, it is kind of fun to get the extra dollars. But if it is unjustly enriched because of a mistake, we all know we should not accept those dollars, and we should correct the mistake, according to the formula and understanding that we all had when we passed the highway bill in 1991.

So that is really the deeper underlying question here tonight. Are we Senators going to live up to our word? Or are we going to be greedy and take advantage of a mistake that was made, even though we know that is not fair, that is not the right thing to do? That is the deep underlying question here tonight that we have to ask ourselves.

I say, Mr. President, that it is very clear. I am surprised that we are debating this. I am surprised that this amendment was not automatically accepted. It was a mistake. We are not in a highway allocation fight tonight. This is not a donor-donee issue. We all know it is better to correct something sooner than later. So let us correct it tonight.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me reiterate that there is no mistake involved here. In fact, nobody has said there is a mistake involved here.

Mr. BAUCUS. Will the Senator yield for a question?

Mr. GRAMM. Let me make my point, and then I will be happy to. Here are the facts: ISTEA says that the allocation of funds among States shall be based on the most recent data available. That is what it says. The most recent data available, provided by the Treasury Department, was the data which was, in fact, provided under the law.

In fact, if you will read the letter sent to Senator BAUCUS, basically that letter makes it clear that it is the Department of Transportation's position

that it does not have authority to use anything other than the official accounts of the trust fund maintained by the Department of the Treasury in calculating apportionments among the States.

Here is the point. When the Treasury gave their estimate, they gave that estimate based on the best data they had available and required by the law. It is true that, if you go back after the fact and take data that they did not have that they could have had, you could have allocated funds differently. But to call that an error is simply a misuse of the English language. The Department of Transportation used the best estimate they had based on the data they had.

Now, what the Senator from Montana is trying to do is to say that, because they did not have data then which they now have, that we should now go back and alter allocations. No one disputes that the 1997 formula, which is in the bill before us, is based on the newest data, which no one disputes as being the best available data that apparently everyone is satisfied with, no one says that the allocation of funds in this bill are in any way unfair for fiscal year 1997. If they do, I have not heard it.

But what the Senator is saying is that because the Treasury did not have final 1994 data in 1996 when they did the estimate, and because they gave the best data available, complied with the letter and the spirit of the law, that knowing now what that data turned out to be after the fact that we could go back last year and rewrite the formula.

Clearly, ISTEA provides no authority whatsoever to do that, and what is being sought here is rewriting ISTEA. This is legislation on an appropriations bill. This is taking an allocation for 1997, that no one disputes as being valid, and changing it to reallocate funds to reflect an allocation that would have occurred had the Department of Transportation had data which was not available.

It seems to me that this is gamesmanship that we can engage in endlessly. Let me give you an example.

Next year we may have the final 1995 data. Next year we might even have the 1996 data. It would be possible for this Senator or any other Senator next year to stand up and say, "When the allocation was done for 1997, the Department of the Treasury relied on 1995 data, but actually, if they had known what the 1996 tax collections would have been, they could have had a different allocation."

My point being, this amendment could be offered every single year because there is a lag in available data that the Treasury is able to provide the Department of Transportation to do these estimates. What we have done in the past is simply each year made the

fairest estimate that we could make. But I am not aware that we have ever gone back retroactively and said, if Treasury had had newer data and if they had provided it to the Department of Transportation data that we now know but was not known then, could not have been known then, that last year's allocation could be rewritten.

I hope my colleagues will understand and agree with me that next year this same amendment could be offered because next year we will have the actual data for the next year in this series—1995–1996. We could stand up and argue that the actual allocation in the bill before us—not last year—is wrong because it is based on 1995 data which is the best data available but that next year when we get 1996 data it might produce a different allocation.

The point is that while 31 States in fact do benefit, some very slightly, by this reallocation, this amendment could be offered every single year to every Department of Transportation allocation of funds under ISTEA because each year we get a new data point. You could take that data point which was not available when the funds were allocated by the formula, but, if it had been available, the allocation would have been different.

Do we want to do this every single year? Am I to stand up next year when the 1996 data is available and say had we known in writing in the 1997 allocation what the actual 1996 data was, which we do not know today, that the allocation would have been different and Texas would have gotten more money and, therefore, I want to go back retroactively and take money in the 1998 bill away from some other State, perhaps Montana, to give to Texas?

I think this is a very, very bad precedent, and it is something that could be done every single year. That is the point. I hope that we will not do this because we are setting a precedent that it seems to me simply leaves chaos in the allocation of these funds.

I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Texas—by the way, one of the biggest beneficiaries of this bureaucratic snafu, his State, gets more dollars as a result of this bureaucratic snafu than almost any other State.

Mr. GRAMM. That is not correct. California loses the most dollars under your amendment.

Mr. BAUCUS. I said one of the most. I did not say "the."

He is saying that, under the law, the allocation is made according to the best data available. The fact is the data was available and is available in 1994. Do you know what happened? Some bureaucrat punched the wrong keys. So the allocation was put over to

the general fund instead of the highway trust fund. The data is always available. It is collected. Just some bureaucrat, somebody, made a mistake and punched the wrong buttons in the computer. So the allocations from States, gasoline receipts from States, a portion of it, was put in the wrong account. It was put in the general fund, not the trust fund. The data was available.

More importantly, I am astounded at the argument of the Senator from Texas. The Senator from Texas who rails against bureaucracy, who rails against the Federal Government, is standing here tonight basically standing up for the bureaucratic "snafu protection act." As he says, if a bureaucrat makes a mistake, we do not correct it. If the bureaucrat makes a mistake, we do not correct it, and we do not come back here on the floor and try to correct the mistake. I am astounded, absolutely astounded, that the Senator from Texas would stand up and say we should let a bureaucrat who makes a snafu continue the effect of that mistake and do not correct the mistake even though the result is \$1.6 billion of unfairly distributed highway trust funds.

That is essentially what he is saying. Essentially that is what he is saying. Do not correct the mistake. If we come back here next year and find a mistake, we should not correct it.

I hope we do not come back here next year and correct this mistake again. The Department of Treasury has said, and I take them at their word, in a memo they sent up to us here tonight, "Procedures have been implemented to assure that future adjustments to the highway trust fund occur in an accurate and timely manner."

Now no one can guarantee they will not make a mistake again. I would guess tonight there are a lot of red-faced folks over there in the Department of Treasury perhaps watching this debate saying, "Oh, my gosh, how do we make that mistake? How in the world did that happen? Boy, don't we have egg on our face." It is true they do. They made a booboo, a \$1.6 billion mistake.

So all we are saying is let us correct it. The Senator is wrong when he says this is an allocation fight tonight. It is not that. Nobody who is listening to this debate believes it is. Nobody who is listening to this debate believes the argument that this is an allocation fight. This is simply an effort to correct a mistake. That is all it is, pure and simple.

Now somebody can come up with some kind of sophistry, argument, turn on the tail and come back around, and so forth, to try to confuse people. This Senator is not trying to confuse anybody. This Senator is trying to very plainly ask the Senate to correct a mistake that was made—and this is another point, Mr. President—so that



when we go into ISTEA next year there is a better taste in people's mouths; that Senators will be more inclined to know that the base is fair.

I tell you, Mr. President, if this mistake is not corrected, there is going to be a lot of bitterness in that debate next year as we begin to try to figure out what the correct allocation is because Senators will know that a mistake that should have been corrected was not corrected and we are starting off basically with a base that is the result of a big snafu and that snafu is compounded every cycle.

I do not think we want that. I think we want to start off on a level playing field, and the level playing field will be the restoration of what the formula is supposed to be and that will be the case if this mistake is corrected.

Mr. President, I ask unanimous consent to add Senators GRASSLEY and BINGAMAN as cosponsors to the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I do not know that we are gaining very much in dragging this dead cat back and forth across the table here, but let me go back to the point which I think is relevant.

Where is this snafu? I see no documentation of a snafu.

Let me go back and outline exactly what the law says and how it works and make clear what the Senator is calling a bureaucratic snafu, the pressing of a button by a mindless, nameless bureaucrat. If the Senator has data to show that, if the Senator has documentation to show that a bureaucrat pushed the wrong button, this Senator would like to see it. But I do not have it.

Now, here is what I understand the facts to be. Under ISTEA, the Department of Treasury, based on the newest data available to them, gives an estimate to the Department of Transportation as to how much in highway trust funds is collected by States.

When this estimate was given for last year's appropriation, the Department of Treasury did not have the final 1994 data, as I understand it. If someone has evidence to the contrary, I would like to see it. But based on everything that I have seen, based on all the correspondence that is available, the Treasury Department, based on the newest data they had, gave an estimate of tax collections by State to the Department of Transportation, which, based on that data, which at that point, to the best of my knowledge or anyone else's knowledge, was the best data that was available, on the basis of that data the Department of Transportation allocated funds in last year's appropriations bill which in fact we voted

on and it became law and the funds were allocated.

What is being called a snafu here is that based on the best data they had last year, the Department of the Treasury made an estimate, and if they had data that is now available 1 year later they would have made a different estimate and the allocation formula would have been different. But that is not a snafu. Basically, they were using the best data they had last year just as we are using the best data we have this year.

My point is that it is distinctly possible, in fact probable, likely, that next year when we have 1995 and 1996 data we will find the allocation used for 1997 would have been different had we had this data, which we did not have this year.

The point being each and every year we can go back and second-guess last year's estimate based on data that the estimators did not have. I would be able, if we set this principle, to offer an amendment to next year's appropriation based on actual data that will be available next year which is not available this year to say that the formula this year would have been different had we had another year of data. And it will be. Invariably it will be.

There is no mistake in the current allocation based on the newest and best estimate we have, but what the Senator from Montana is saying is that the estimate made last year was made on the data which was available then. I do not know that he is arguing a conspiracy by the Treasury. I hear the word snafu, pressed the wrong button, but I do not have any data to substantiate that, and I would be willing to look at it if there is data. But based on everything they knew, the Treasury made an estimate last year, and on the basis of that estimate we allocated money.

Based on everything they know this year, they made an estimate, and we are allocating money again. But if we are going to go back and change this year's formula based on new data that was not available last year, why can we not do that next year and the next year and the next year?

The whole purpose of this system is to take the best data available and allocate funds on the basis of it. That is what, based on all the information that I have, the Department of the Transportation did. And relying on this data—and the law requires the Department of Transportation to rely on this data—they allocated funds. Now the Senator is saying a year later that if we had had new data that has since become available, the allocation would be different. He is right. But the point is the same will be true next year about this year. The same will be true year after next about next year. If we are going to get into a situation where every year we are going to look back at

the last allocation based on data that was not available when the allocation was made, we are going to be able to reestimate everything.

Was it a snafu that the estimate they had last year based on the best data turned out not to be right when they got the final data? I do not think it was a snafu. It was an estimate based on what they had. It is no more a snafu than the data we are using this year, when next year we have an additional year, will clearly be different. And by the same logic I could stand up here and say it was a snafu last year. Based on the data the Treasury had last year, we had an allocation of money, but now 1 year later with actual data they did not have, I want to go back and reestimate the allocation.

I think we are inviting chaos if we go down this road because we could do it every single year. Was the estimate last year more inaccurate than the estimate this year will turn out to be? I do not know. Maybe it was. Maybe it will be less inaccurate than the estimate this year will turn out to be. The point is, the law requires the use of the best available data. Based on everything I know, that was done.

The Senator talks about snafus, about pushing the wrong key on the computer. I do not know about any of those things. I see no documentation whatsoever. All I have seen documentation on is that, based on the best data they had, the Treasury made an estimate. We allocated funds on it. Now that they have another year of data, if they were making the estimate today, it would be different.

That is like saying, if I am predicting what is going to happen next year, that it is a snafu that I have imperfect knowledge relative to what I will have next year after I have lived out the year. I do not call that a snafu. I simply call it having to make decisions on the best data that is available.

I think this is a fundamental issue. I think many of my colleagues started this debate saying there was a mistake made in last year's estimation because they did not have data which we now have. It just so happens, in that mistake, 31 States gain and 19 States lose. The point is the exact same facts will exist next year and the next year and the next year and the next year, and maybe it will be other States who will gain next year and other States who will lose. But we are creating a chaotic situation if we are going to try to go back each year and redo last year's formula, based on data that was not available last year.

That is why, while this is not be-all and end-all of the planet, this is a bad principle and it is a principle we are going to end up refighting every year.

In fact, if we start down this road, we might as well have a 1-year lag of collecting the money to allocate it because we are going to end up, every single year, rewriting this formula. Because every Senator is going to check the allocation based on the new data that will be available next year, reestimate the allocation this year, and all those who will gain are going to stand up, as our dear colleague is saying, and say, "There was a snafu. Somebody pushed the wrong computer key. Somebody made a mistake. They predicted the future and the future turned out to be different, and therefore we ought to go back and correct that."

The point is, that is not how the system works. If we are going to do that, we are going to create chaos, and that is why I hope we will not do it.

Mr. MACK. Mr. President, I am here today to oppose the amendment being offered even though my State, Florida, would marginally benefit from its passage.

This amendment is said to correct a bureaucratic error—a mistake which resulted in many donee States receiving for 1 year less than what they thought they were entitled to under the law.

Well, it is extremely hard for me to be sympathetic to this argument. I know a good number of States—donor States—who, for the last 5 years, feel they got far less than that amount to which they were entitled. They would call the formulas enacted in law during ISTEA a mistake.

I believe the amendment now being considered appropriately highlights the problems that result from a muddled, inefficient, and overly bureaucratic Federal highway program.

So, not only is it my intention to oppose this amendment tonight, but it is my intention to be a leader in the fight next year to move our Nations' transportation program away from the Federal highway program that exists today.

It is high time to harness the ingenuity of State officials and local governments, the entrepreneurialism of private industry, and the strength of the financial markets to enhance the Nation's transportation infrastructure. It is time to recognize that the national interest may be best served by allowing States to assume the primary role in transportation uninhibited by Federal mandates, the redistribution of States gas tax dollars.

I look forward to working with my colleagues next year to return the primary role in transportation to our States.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I do not want to prolong this either, but I would much rather read facts into the RECORD than sit here in a quorum call. So I will correct the misinformation we just heard from the Senator from Texas.

The Senator from Texas is trying to imply this is an error in estimating the highway trust fund, it is not a bureaucratic error. I would like to address that by reading the memorandum to the chairman of the committee from the Department of the Treasury, dated today.

There is a little bit of bureaucratise in here, but, if you listen closely, you can tell this is not an estimate problem, it is a bureaucratic problem. I will read from the beginning.

In fiscal year 1994, an accounting error, described in greater detail below—

It did not say an error in estimating, in estimating receipts. It says "an accounting error." An accounting error was made—

Resulted in a \$1.590 billion misallocation of excise taxes against the Highway Trust Fund. . . .

Then it says:

This misallocation of excise taxes was corrected in Fiscal Year 1995.

Then going on:

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services . . . by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between accounts initially transferred and "actual" quarterly liability. This adjustment was referred to as the "Correcting Adjustment."

More importantly:

At the request of OTA, [that is the Office of Tax Analysis, in the Treasury] the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed.

I will repeat that statement.

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed.

The format was changed.

This [format] change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994.

The problem is not a miscalculation of the estimates. It was a mistake made because of a change in format. Somebody over there did not understand the new format and took the data, the correct data, but put it in the wrong account.

This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust

Fund occur in an accurate and timely manner.

This has nothing to do with what the right estimate is, nothing at all. This has everything to do with just a bureaucratic mistake in misinterpreting a new format, that is all this is. It is very clearly a clerical, bureaucratic error. It is not an error in estimating tax receipts, not at all. It is an error made in computing the adjustments that were made between the Highway Trust Fund and the General Fund. That is all this is, stated clearly by the Department of the Treasury. That is the technical argument.

The basic argument, Mr. President, is: Here we are. This is the end of July. This is 1996. What special is going on right now in America? It is the Olympics. In the world? It is the Olympics down in Atlanta, where people compete fairly. They compete according to the rules, and there are winners and losers, according to the rules. Certainly Senators, if they want, can take advantage of a mistake, take advantage of something that is unfairly given to them at the expense of somebody else. Or they can live by the rules, live by the rules and not take advantage of an ill-begotten gain but rather say, yes, that is not fair, let us correct this, when the real battle on highway allocation of trust funds is next year when Congress takes up the transportation bill.

That is what this is all about, very simply, very plainly. Are we going to correct a mistake or are those Senators who are enriched by the mistake going to take advantage of that mistake? Or are they going to say, yes, a mistake is made, let us correct the mistake and let us go on.

I made a point earlier, which I think is one worth remembering. That is, if this mistake is not corrected, it is going to sour the debate next year when Congress takes up the highway bill, because Senators are going to know the debate begins not with what it was supposed to be, not as was determined by the 1991 highway bill. Rather, it would be based as a result of a bureaucratic snafu, and I do not think we want that. I think we want to correct the mistake.

I urge my colleagues to just basically correct the mistake and get ready for the battle next year when we take up the highway bill in earnest, because that is the proper place to do all that.

Mr. President, I ask unanimous consent the letter, dated July 31, 1996, from Linda Robertson to Senator CHAFEE, be printed in the RECORD, and I yield the floor.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,

Washington, D.C., July 31, 1996.

Memorandum to: Senator JOHN H. CHAFEE, Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.



From: Linda L. Robertson, Assistant Secretary, (Legislative Affairs and Public Liaison).

Subject: Correcting the misallocation of excise taxes between the highway trust fund and the general fund.

In Fiscal Year 1994, an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes, against the Highway Trust Fund (HTF). This misallocation of excise taxes was corrected in Fiscal Year 1995.

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services (FMS) by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between amounts initially transferred and "actual" quarterly liability. This adjustment is referred to as the "Correcting Adjustment."

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed. This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, one of the things I always try to tell my children is you should never debate about facts. You go look up facts, you debate about ideas, you debate about what they mean.

Our dear colleague from Montana just quoted from correspondence that, so far as I can determine in talking to the majority and the minority side, no one else has.

What I would like to propose is this—and I would like to have a copy of it. What I would like to propose is that we set this amendment aside to give all of us an opportunity to talk to the Treasury Department in the morning and ascertain exactly what the facts are so that we can debate tomorrow where we all are dealing with the same facts.

We are all, obviously, entitled to our ideas. Jefferson once said good people with the same facts are going to disagree. But what I think is important that we do is that we be certain that we are all dealing with the same facts. What I will promise my colleague is that I will, obviously, read this memo, and I will talk tomorrow to the Treasury Department to ascertain exactly what happened.

All of the documentation that I have that was made available to my office by the Department of Transportation shows that this simply was a best available estimate, which, obviously, is different now that we have additional

data, as you would expect it to be. But I would certainly be willing to look at additional information from the Treasury Department. I think probably the best thing to do is to set this amendment aside and give us all an opportunity to talk to the Treasury Department to try to ascertain what the facts are. That would be my suggestion.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, to say that it is a complex issue is an understatement. I am not sure everybody on this floor fully understands what we are debating. But let me tell you what I do understand about it, and I welcome the comments of either of the managers or the author of the amendment.

We appropriate trust funds 2 years after we receive them. For instance, whatever we took in in the trust fund in 1994 is actually allocated to the States in 1996. That is my understanding. As I say, I invite anybody to correct anything I say. I just want everyone to understand what we are talking about.

So whatever the Treasury Department takes in in gasoline taxes, which is called the trust fund, in 1994, is allocated for use in 1996. So in 1994, apparently the Treasury Department made an error and took in \$1.5 billion more than they said they were going to have, and rather than try to correct the error at the time it was made, they said, "Well, we will just save this until next year. We'll put it in the 1995 allocation."

Now, bear in mind that when you are allocating money in 1995, you are talking about money that the States are going to get in 1996, simply because we appropriate money a year in advance.

Mr. BAUCUS. Mr. President, if I might, a slight correction, 1995 is in 1997.

Mr. BUMPERS. Please feel free to interrupt.

Mr. BAUCUS. The 1995 determination affects the 1997 allocation, 2 years later.

Mr. BUMPERS. Say that again, please.

Mr. BAUCUS. The allocation made to States is determined by the receipts received 2 years earlier. So 1994 determines 1996, and the amount in the trust fund in 1995 determines 1997.

Mr. BUMPERS. You appropriate the money in 1995 for 1996, don't you?

Mr. BAUCUS. Yes.

Mr. BUMPERS. That is correct?

Mr. BAUCUS. That is correct.

Mr. BUMPERS. That is right, you allocate it 2 years later than the Treasury Department receives it. But the basic problem here is that the Treasury Department underestimated by \$1.5 billion 1994 receipts.

So when it came time to appropriate the money from the trust fund in 1995, it was appropriated, not realizing the fact that they had \$1.5 billion more than they thought they had. So this year, 1996, the States got an allocation of 1994 trust funds that was \$1.5 billion short—\$1.6 billion, to be precise.

Here is my problem. My State tells me that by the time the \$1.5 billion error had been discovered, everybody knew it, and the great State of Arkansas got less money in 1996 than we were entitled to, and we were told that we would get it made up in 1997, which is the bill we are debating here tonight, the 1997 bill.

So the 1997 money is being allocated here this evening and, lo and behold, an amendment is offered that would cause my State to be about \$6.5 million short. Now, that is not a lot of money to a very many people. However, in the State of Arkansas, \$6.5 million is a pretty good hunk of change.

So Arkansas got less money in 1996 than we were supposed to get. We did not get our share of that \$1.5 billion. And now they are taking it away from us again in 1997.

So, as I say, that is my understanding so far. And on that basis, of course, I do not have any choice but to vote against the Senator from Montana's amendment. I am hoping that a lot of other people will do likewise.

I also note that the managers of this bill would like to get this thing done tonight so they can get out of here. I do not want to slow things up. But I would like, when all this conversation ends over here, to have somebody to comment on the things I have said, either refute the statement I made that we got less money in 1996 than we were supposed to get, or that we got more. But you should not penalize my State in 1997 and give us less money if we got penalized last year. That is what we call a double whammy. And it is not right and it is not fair.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, at 7:45 I will make a motion to table the Baucus amendment and ask for the yeas and nays at that time. I say that at this point in order to give Members due warning and opportunity to return to the Hill. And I say this. We will make no other compensation for people being off the Hill until we finish this bill tonight.

Everybody ought to be alert to the fact we may have votes at any time,

and we are not going to delay a vote henceforth. But this vote will be called at 7:45. I, at that point, will make a motion to table. Mr. President, I ask unanimous consent that I be recognized at that time to make that motion.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATFIELD. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 3603

Mr. HATFIELD. Mr. President, on behalf of the leader, I propound a unanimous-consent agreement adopting the conference report accompanying H.R. 3603. This has been cleared on both sides.

I ask unanimous consent that when the conference report accompanying H.R. 3603, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for Fiscal Year 1997, is received in the Senate, that it be considered as having been agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

The Senate continued with consideration of the bill.

##### AMENDMENT NO. 5142

(Purpose: To transfer previously appropriated funds among highway projects in Minnesota.)

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to set aside the current amendment, and I send an amendment to the desk on behalf of Senator WELLSTONE and ask for its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for Mr. WELLSTONE, proposes an amendment numbered 5142.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title IV, insert the following:

#### SEC. 4. TRANSFER OF FUNDS AMONG MINNESOTA HIGHWAY PROJECTS.

(A) IN GENERAL.—Such portions of the amounts appropriated for the Minnesota highway projects described in subsection (b) that have not been obligated as of December

31, 1996, may, at the option of the Minnesota Department of Transportation, be made available to carry out the 34th Street Corridor Project in Moorhead, Minnesota, authorized by section 149(a)(5)(A)(iii) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 181) (as amended by section 340(a) of the National Highway System Designation Act of 1995 (Public Law 104-59; 109 Stat. 607)).

(b) PROJECTS.—The Minnesota highway projects described in this subsection are—

(1) the project for Saint Louis County authorized by section 149(a)(76) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 192); and

(2) the project for Nicollet County authorized by item 159 of section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2056).

Mr. LAUTENBERG. Mr. President, this amendment has been cleared by both sides. We are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5142) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. HATFIELD. I move to table the motion.

The motion to lay on the table was agreed to.

##### AMENDMENT NO. 5143

(Purpose: To provide conditions for the implementation of regulations issued by the Secretary of Transportation that require the sounding of a locomotive horn at highway-rail grade crossings.)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk on behalf of Senator WYDEN of Oregon and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for Mr. WYDEN, for himself and Mr. KERRY and Mrs. MOSELEY-BRAUN, proposes an amendment numbered 5143.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

#### SEC. . TRAIN WHISTLE REQUIREMENTS.

No funds shall be made available to implement the regulations issued under section 20153(b) of title 49, United States Code, requiring audible warnings to be sounded by a locomotive horn at highway-rail grade crossings, unless—

(1) in implementing the regulations or providing an exception to the regulations under section 20153(c) of such title, the Secretary of Transportation takes into account, among other criteria—

(A) the interests of the communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings as of July 30, 1996; and

(B) the past safety record at each grade crossing involved; and

(2) whatever the Secretary determines that supplementary safety measures (as that

term is defined in section 20153(a) of title 49, United States Code) are necessary to provide an exception referred to in paragraph (1), the Secretary—

(A) having considered the extent to which local communities have established public awareness initiatives and highway-rail crossing traffic law enforcement programs allows for a period of not to exceed 3 years, beginning on the date of that determination, for the installation of those measures; and

(B) works in partnership with affected communities to provide technical assistance and to develop a reasonable schedule for the installation of those measures.

Mr. WYDEN. Mr. President, the purpose of this amendment is to give local communities time to work with the Department of Transportation and the Federal Railroad Administration to find grade crossing safety mechanisms that meet their needs.

Without this amendment, the Federal Government, beginning in November of this year, will impose a one-size-fits-all standard on every community in America with a railroad grade crossing. Many communities have banned the blowing of train whistles. But the Federal Government would preempt these local laws and impose a requirement that trains begin blowing their whistles within one quarter mile of any crossing that does not have the most expensive grade crossing safety equipment.

Without this amendment, every community in America that doesn't have the fancy, top-of-the-line grade crossing safety gates will be forced to go out and immediately spend upwards of \$300,000+ to install this equipment, or face Federal preemption. This means small communities of several hundred will have to find \$300,000 for this equipment, or see their local train whistle bans preempted by the Federal Government.

Under current law, on November 2 of this year, all towns without complex and expensive grade safety requirements will be required to lift their train whistle bans. What this means for some towns in Oregon and across the country, is that day and night the communities are going to be barraged with train whistles.

These communities are essentially being blackmailed by cacophony into raising taxes and putting up exorbitant amounts of money to install highly sophisticated safety measures—when in many cases, much simpler measures would have the same desired results.

My friends, there is a better way to do this. Safety is paramount, but under these train whistle requirements, what we are seeing is cookie-cutter solutions to safety that may not be appropriate for all communities.

Many communities can make substantial improvements in safety through public education, highway markings, and signage, but right now it looks like their only choice is a costly four quadrant gates—otherwise, they are going to be doomed to whistling trains.



The original legislation, while placing an important emphasis on train safety, left out one key issue and that is community involvement in the decision making on train whistle bans.

My very simple amendment would encourage the Department of Transportation to work with communities to develop effective local solutions.

First, the Department would be required to take into account the interests of affected communities and the past safety record at the grade crossing involved when determining how to implement safety requirements.

Second, where the Department determines that a grade crossing is not sufficiently safe, my amendment requires them to work in partnership with communities to develop reasonable safety requirements.

In Oregon, there are two communities in particular that are concerned about the train whistle ban requirements, Pendleton and the Dalles. In these communities, trains may pass through certain neighborhoods every few minutes. Trains are required to blow their whistles one-quarter mile before reaching a grade crossing. Clearly this is a recipe for chaos.

I think that it is important that the Department of Transportation work with these communities to develop effective and timely safety measures, instead of mandating costly and perhaps unnecessary grade crossing equipment or threaten them with nonstop whistles.

My amendment will do just this and I urge the Senate to support its inclusion in this legislation.

Ms. MOSELEY-BRAUN. Mr. President, this amendment provides important direction to the Department of Transportation with regard to the implementation of a provision of the Swift Rail Development Act of 1994.

Under this 1994 law, the Federal Government is required to develop regulations that direct trains to sound their whistles at all hours of the day and night at most at-grade railroad crossings around the country, unless the local communities can afford to act on a specified list of alternatives. The Swift Rail Development Act will require trains to blow their whistles at approximately 168,000 railroad crossings in the U.S. and more than 9,900 in Illinois—including about 2,000 in the Chicago area and 1,000 in Cook County alone.

This provision was inserted into the 1994 law without debate or discussion. Communities had no input into the process, even though it will be communities that will be most affected.

I am acutely aware of the need to improve the safety of railroad crossings. A recent tragedy in my home State involving a train and a school bus in Fox River Grove, IL, killed seven children and shattered the lives of many more families. According to statistics pub-

lished by the Department of Transportation, someone is hit by a train every 90 minutes. In 1994, there were nearly 2,000 injuries and 615 fatalities caused by accidents at railroad crossings around the country. Clearly, ensuring the safety of our rail crossings is imperative.

The Swift Rail Development Act mandates that trains sound their whistles at every railroad crossing around the country that does not conform to specific safety standards. It does not take into consideration the affect of this action on communities, nor does it require the Department of Transportation to take into consideration the past safety records at affected at-grade crossings.

Requiring trains to blow their whistles at every crossing would have a considerable affect on people living near these crossings. It is unclear, however, that there would be a commensurate improvement in safety. In Fox River Grove, for example, the engineer blew his whistle as he approached the road crossing, but the school bus did not move.

At many railroad crossings in Illinois and elsewhere, accidents never or rarely occur, while some crossings are the sites of frequent tragedies. Just as we do not impose the same safety mandates on every traffic intersection in the country, we should not universally require trains to blow their whistles at every railroad crossing in the country.

When transportation officials decide to make safety improvements at a highway intersection, they consider a wide range of factors, including its accident history, traffic patterns, and conditions in the surrounding area. Every intersection is a case study. There are guidelines, but not inflexible rules.

The approach to railroad crossing safety should be no less reasoned. The train whistle should be one tool in the transportation safety official's regulatory repertoire; it should not be the only one. Because every community has a different history and different needs, I do not believe that a one-size-fits-all, top-down approach to railroad crossing safety is appropriate.

In Dupage County, IL, for example, there are 159 public railroad crossings. In 1994, there were accidents at only 18 of these crossings, and 45 have not experienced an accident in at least 40 years. On one of METRA's commuter rail lines, 64 trains per day pass through 35 crossings. In the last 5 years, there have been a total of three accidents and one fatality along the entire length of this corridor.

Every one of the crossings on this METRA commuter line has a whistle ban in place to preserve the quiet of the surrounding communities. The imposition of a Federal train whistle mandate on this line would, therefore, have a considerable negative impact on

the quality of life of area residents. The safety benefits, on the other hand, would, at best, be only marginal.

METRA's Chicago to Fox Lake line has 54 crossings and is used by 86 trains per day. A whistle ban is in place on 37 of these crossings. Between 1991 and 1995, there were a total of 13 accidents on this line, with five injuries and one fatality.

In Des Plaines, IL, one of my constituents reports that she lives near five crossings. In the last 11 years, there has been only one accident at any of these crossings. She will hear a train whistle at least 64 times per day and night.

In Arlington Heights, IL, there are four crossings in the downtown area about 300 feet away from one another. 5,400 residents live within one-half mile of downtown, and 3,500 people commute to the area every day for work. Sixty-three commuter and four freight trains pass through Arlington Heights every weekday between the hours of 5:30 am and 1:15 am.

Train whistles are blown at nearly 150 decibels, and depending on the weather, they can be heard for miles. According to one Burlington Northern railroad conductor, a train traveling from Downers Grove, IL to La Vergne, IL—a distance of approximately 12 miles—would have to blow its whistle 124 times. 144 trains travel this route every day.

Mr. President, the residents of these communities, and others across Illinois and the country, are confused by the 1994 law that will require train whistles to sound at all hours of the day and night in their communities—in some cases hundreds of times per day—at railroad crossings that have not experienced accidents in decades, if ever.

Under a Federal train whistle mandate, home-owners in many of these communities would experience a decline in their property values, or an increase in their local taxes in order to pay for expensive safety improvements. The 1994 law, in this respect, represents either a taking of private property value, or an unfunded mandate on local communities.

The train whistle mandate places the entire burden on the community. Trains will keep rolling through quiet, densely populated towns at all hours of the night, and both the railroads and the passengers will experience no disruptions.

In aviation, by contrast, airline flights are routinely routed to minimize the disturbance to surrounding communities. Flight curfews are established, and restrictions are placed on certain types of aircraft in efforts to minimize the disruption to area residents. These restrictions place burdens on airlines, passengers, and the communities; it is a joint effort.

The pending amendment provides the Department of Transportation with important direction on how to implement

the train whistle law in a more rational and flexible manner. It directs the Secretary of Transportation to consider the interests of affected communities, as well as the past safety records at affected railroad crossings. The concerns of local communities must be heard—not just the sounds of train whistles.

It also addresses safety concerns. In situations where railroad crossings are determined not to meet the supplementary safety requirements, communities will have up to a maximum of 3 years to install additional safety measures before the train whistle mandate takes effect. In these situations, the Department of Transportation will work in partnership with affected communities to develop a reasonable schedule for the installation of additional safety measures.

Mr. President, I have been concerned about the implementation of the Swift Rail Development Act since Karen Heckmann, one of my constituents, first brought it to my attention more than a year ago. Since that time, I have spoken and met with mayors, officials, and constituents from Illinois communities, and visited areas that would be most severely affected. In response to their concerns, I have written several letters to, and met with Transportation Secretary Peña and other officials numerous times, and have been working with the Department of Transportation to ensure that they implement the 1994 law in a manner that both works for communities and protects safety.

This amendment provides important congressional direction to the Department of Transportation that is consistent with the ongoing discussions that I, and other members of Congress, continue to have with the Department. I urge all of my colleagues to vote for this important amendment.

Mr. KERRY. Mr. President, today I was pleased to join with Senator WYDEN to cosponsor an amendment concerning an issue of great importance to a number of my constituents. Many of them have contacted me about the 1994 Swift Rail Development Act [SRDA]. As you know, the SRDA allows for Federal preemption of local train whistle bans so that all trains would begin sounding their whistles one-quarter mile before reaching any grade crossing.

My home State of Massachusetts has 88 grade crossings in some 27 communities whose whistle bans would be preempted by this law. Many of these communities have good safety record: From January 1988 through June 1994, the Federal Railroad Administration [FRA] noted 34 accidents involving one fatality and 15 injuries at these crossings. Some of these communities are strongly opposed to Federal preemption of their whistle bans.

Their concerns were not allayed by FRA officials at a meeting that took

place in Beverly on October 25, 1995 to discuss the SRDA. A member of my staff reported that many who attended desired outright repeal of the SRDA. As Christopher Smallhorn of Beverly Farms wrote:

I doubt your representative will transmit to you the feeling of frustration and anger taken away by those taxpayers attending the meeting.

A sampling of my correspondence from other constituents reveals that others share Mr. Smallhorn's concerns. John J. Evans from Beverly Farms wrote:

This proposed new regulation \*\*\* will render my home uninhabitable as my house sits between two grade crossings.

Fay Senner wrote:

The safety at these railway crossings is a local issue and one that we have been able to manage effectively in the 150 years that railroads have been a part of life in Acton.

Scott and Sharon Marlow of Andover wrote:

My daughter was born with a cardiac muscle defect and I do not even want to think about the anguish loud whistle blasts would have caused my family or any other family with a heart condition.

William C. Mullin, chairman of the Acton Board of Selectmen, wrote:

If train whistles once again pierce the peace and quiet of our community, the anger of our residents will be quickly felt.

Richard and Nancy Silva of Beverly wrote:

The horn blowing will change the value of our home and add more stress in an already stressful environment.

Diane M. Allen, chairman of the Wilmington Board of Selectmen, wrote:

We do not wish to have the Federal government set unjustifiable standards for our local roads nor do we want those decisions of our duly elected officials to be overridden by the Federal government.

Nevertheless, the safety of railroad grade crossings is clearly a real issue, as the October 1995 school bus accident in Illinois sadly illustrates.

The FRA has released a study showing that accidents occurred at fewer than 6 percent of the Nation's grade crossings where whistle bans are in effect. A one-size-fits-all approach is therefore not appropriate. I am thus proud to cosponsor this amendment, which contains a more sensible strategy for dealing with this issue, and I compliment the Senator from Oregon and his staff for bringing it before the Senate.

Knowing the impact that the SRDA is having on communities and constituents in both Massachusetts and other States, I look forward to working with the FRA and my colleagues to ensure the safety of grade crossings without hurting the quality of life in our communities. I urge my colleagues to join in supporting the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5143) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. HATFIELD. I move to table the motion.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I indicate at this point, that with one exception, we have completed all the Members' amendments that we know about and were part of the unanimous-consent agreement we reached last night, which means the only amendments we have left, namely, two relevant amendments for Senator LOTT, six amendments on terrorism for Senator LOTT, and the McCain amendment, as I understand it, and the Biden amendments, five of them on antiterrorism. We are about ready to have a completion of the Bradley amendment.

We have completed all but the antiterrorism issue. Mr. President, first of all, it is not relevant to this bill in terms of it being legislative action on an appropriation. I am very hopeful that we can have an agreement reached to remove that encumbrance to completing this bill and having final passage.

I believe that is the only other vote that we will have to have on this bill. We can do that following the vote that we are about ready to take up, on a tabling motion of the Baucus amendment.

I urge any Member or any Member's staff person who has knowledge of these amendments that we had included in our unanimous-consent agreement, if they have any different viewpoint, or if they have any question, they better address those questions during the next vote and come to Senator LAUTENBERG and my desk here to go over the list to make sure they have been taken care of in our efforts to cover the remaining business.

Otherwise, we will proceed to end in a couple of colloquies for the other two amendments, and hopefully by that time the leadership can give us some indication of what kind of an agreement may have been reached at a meeting that began at 6 o'clock tonight relating to the issue of antiterrorism.

#### AMENDMENT NO. 5141

Mr. HATFIELD. With that, Mr. President, under the unanimous consent, I move to table the Baucus amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table, the amendment No. 5141.

The yeas and nays were ordered.



The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 260 Leg.]

#### YEAS—42

Abraham	Feinstein	Lott
Ashcroft	Frist	Lugar
Bond	Glenn	Mack
Boxer	Graham	McCain
Breaux	Gramm	Mikulski
Brown	Grassley	Nickles
Bumpers	Hatfield	Nunn
Campbell	Helms	Robb
Coats	Hutchison	Santorum
Cochran	Inhofe	Sarbanes
Coverdell	Johnston	Specter
DeWine	Kohl	Thompson
Faircloth	Kyl	Warner
Feingold	Levin	Wellstone

#### NAYS—57

Akaka	Ford	McConnell
Baucus	Frahn	Moseley-Braun
Bennett	Gorton	Moynihan
Biden	Grassley	Murkowski
Bingaman	Gregg	Murray
Bradley	Harkin	Pell
Bryan	Hatch	Pressler
Burns	Heflin	Reid
Byrd	Hollings	Rockefeller
Chafee	Inouye	Roth
Cohen	Jeffords	Shelby
Conrad	Kassebaum	Simon
Craig	Kempthorne	Simpson
D'Amato	Kennedy	Smith
Daschle	Kerrey	Snowe
Dodd	Kerry	Stevens
Domenici	Lautenberg	Thomas
Dorgan	Leahy	Thurmond
Exon	Lieberman	Wyden

#### NOT VOTING—1

Pryor

The motion to lay on the table the amendment (No. 5141) was rejected.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate will be in order.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, we have one colloquy to be delivered on the floor between Senator BRADLEY and the leader, Senator LOTT. Then we have the possibility of another perfecting amendment, or an amendment dealing with the subject we have just failed to table; we have a Cohen amendment to be dispensed with, and then we are ready for third reading.

AMENDMENT NO. 5141

The PRESIDING OFFICER. The pending question is the Baucus amend-

ment. Is there further debate on the Baucus amendment?

Mr. HATFIELD. I ask unanimous consent to temporarily lay aside the amendment at the moment to engage in a colloquy.

The PRESIDING OFFICER. Is there objection?

Mr. COATS. Mr. President, reserving the right to object, I will not object to proceed with business outside the scope of the Baucus amendment, but I want to preserve the right to offer or to join with others in offering an amendment on that subject. So I just want to put Members on notice that this bill is not going to go forward until we have that opportunity to do so.

Mr. HATFIELD. Mr. President, I think I indicated the other part of the business was to complete that issue, so we are not cutting off anybody's right to offer an amendment.

Mr. BIDEN. Mr. President, will the Senator yield for a comment?

Mr. HATFIELD. Yes.

Mr. BIDEN. Mr. President, I have placed, I think, three or four spots for amendments.

Mr. HATFIELD. Five.

Mr. BIDEN. Five spots. I want to report that due to the great work of the full committee, Senator HATCH and I have elements of a bipartisan agreement on terrorism, and as a consequence of that I am not going to offer any of the amendments on this legislation.

Mr. HATFIELD. I thank the Senator. That will also affect five or six other amendments on both sides.

Mr. BIDEN. I understand they have placed five or six slots based on that. I do not think there will be any amendments on terrorism in this legislation.

Mr. HATFIELD. Senator BRADLEY.

The PRESIDING OFFICER. Without objection, the Baucus amendment is set aside.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I have an amendment that deals with newborns and insurance coverage for newborns, a bill that Senator KASSEBAUM and I introduced last year. It is a bill that had been improved greatly with the help of Senator FRIST and Senator DEWINE and a bill that I care deeply about.

Mr. LOTT. Mr. President, will the Senator from New Jersey yield?

Mr. BRADLEY. I am pleased to yield to the majority leader.

Mr. LOTT. I would like to say I have been aware of this issue the Senator from New Jersey is discussing. There was an attempt made earlier to get it cleared for unanimous consent. We did not get that done. But I want to tell the Senator I will be glad to work with him to get this issue considered the first week in September. I think it is something that we should take up and

have an opportunity to consider. In order to help expedite this legislation but also because I think he has a good point, I want to make the further statement I will work with him to get that accomplished.

Mr. BRADLEY. I thank the majority leader for his statement and his commitment, and I will not pursue the amendment based on what he has said. I think that Senator FRIST of Tennessee concurs.

I simply want the Senate to know that this is an enormously important issue in terms of children who are born and forced out of the hospital in the first 24 hours instead of the first 48 hours, and we hope to revisit this issue when we come back in September.

I am prepared to yield to Senator FRIST if he has anything to say on this amendment.

Mr. FRIST. Thank you, Mr. President. I would just like to say that we have worked long and hard on this bill, the Newborn's and Mother's Health Protection Act of 1996. It is a bill we worked on in a bipartisan way and provides a safe haven for mothers with young children. I am delighted the majority leader—

The PRESIDING OFFICER. The Senator will withhold. The Senate will be in order. The Senator from Tennessee deserves to be heard. The Senate will be in order.

Mr. FRIST. Thank you, Mr. President.

This bill does provide a safe haven for mothers and young children over a 48-hour period. It is a bill we have worked on in a bipartisan way, and do appreciate the consideration the majority leader has given to take this up after Labor Day.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I think we have two final technical amendments to dispose of?

Mr. LAUTENBERG. That is correct. We are also reviewing a matter with the Senator from Maine and the Senator from New Hampshire. I hope we will be able to have that resolved.

Mr. HATFIELD. I believe the Senator from Maine said he would withdraw his?

Mr. CHAFEE. No, I do not believe that is correct.

Mr. HATFIELD. OK, let us do the technical amendments.

AMENDMENTS NOS. 5144 AND 5145, EN BLOC

Mr. LAUTENBERG. Mr. President, I have a technical correction to the bill that simply changes the wording without changing any sums; and one that makes reference to direct loans. We have cleared this with both sides. I send them to the desk for their consideration.

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc? Without objection, the clerk will report the amendments.

The legislative clerk read as follows: The Senator from New Jersey [Mr. LAUTENBERG] proposes amendments numbered 5144 and 5145, en bloc.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 5144

(Purpose: To make a technical correction)

On page 19, strike lines 10 through 12 and insert "For the cost of direct loans, \$8,000,000, as authorized by 23 United States Code 108."

AMENDMENT NO. 5145

(Purpose: To make a technical correction to the bill)

On page 60, line 20, strike "103-311" and insert "103-331".

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendments, en bloc.

The amendments (Nos. 5144 and 5145), en bloc, were agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I might indicate following any action to be taken on the subject of the Baucus amendment, we are ready for third reading of the bill and final passage. I thank the Senators on the antiterrorism amendments, of which we had 11, for reaching an agreement to not pursue them on this particular bill but to have them as a matter of business to be taken up at a later time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I move, after final passage, the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses, and the Chair appoint conferees on the part of the Senate.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I cannot hear what the Senator has asked for in his request.

Mr. HATFIELD. I will repeat. It would be to move ahead on the premise we are going to pass this bill in final passage in a few moments, and to go ahead and appoint the conferees.

Mr. BYRD. Mr. President, I have to object. That is getting a little ahead of the game.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. The only reason I do object, I think that request should wait, I say this with apologies to my dear friend, until the final vote on the bill occurs.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I simply rise to inquire of the Senator from Oregon when we might expect final passage on the legislation? I have a couple of young children who go to bed at 9 o'clock, and it would be kind of nice to get home.

It appears we are through the end of the amendment process. I had a couple of amendments that I referenced that I did not offer. I wanted to expedite the process of this legislation. But if we are near completion, I wonder if the Senator can inform us when he can expect final passage.

Mr. HATFIELD. Mr. President, I will respond that we have a piece of unfinished business before we can go to third reading. The Baucus amendment was not tabled, and we have not disposed of that amendment. There is a process now, I am hoping, of finding some accommodation in order to dispose of the Baucus amendment.

The Senator from North Dakota certainly made a correct point. We should have had this bill passed yesterday. If we are going to do the HUD-VA and independent agencies tomorrow, Friday and Saturday, we have to get this bill behind us. So consequently, we are waiting for that occasion to accommodate the Senators who have an interest in that. As soon as that resolved issue is brought to us, we will do that and third reading.

Mr. DORGAN. I appreciate the Senator's response. None of us enjoy waiting. On behalf of the Senator from Connecticut, Mr. LIEBERMAN, who has a young daughter who expects to wait up for him as well, to the extent we can move ahead, I think all of us would appreciate it.

Mr. HATFIELD. I might say, we have a parliamentary situation beyond an accommodation here to the Senators. We are in a parliamentary situation. We cannot go to third reading until there is a final disposition of either adopting the Baucus amendment or modifying the Baucus amendment. So that is where we are locked in.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I thank the chairman of the Subcommittee on Transportation and the ranking member for their efforts. I believe we are about ready to wrap up this very important appropriations bill. There are good-faith negotiations underway right now. I am hopeful in the next few minutes we will have an agreement on how to deal with the Baucus-Gramm matter. I think we have a reasonable suggestion that can be agreed to. Certainly we hope so.

Then when that is done, we will be able to go to third reading and final passage of the transportation appropriations bill tonight. There has been some suggestion that we carry this over until tomorrow, but as we know, things have a way of growing overnight.

The chairman and the ranking member are absolutely right, as we are very close to completing this appropriations bill. So if Members will be patient a few more minutes, I think we can get it completed and go to final passage.

#### ORDER OF PROCEDURE

Mr. LOTT. Mr. President, for the information of all Senators, we will go tomorrow morning at 9:30 immediately to the reconciliation bill, which is the welfare package. Under the rules I think there are 10 hours allowed for that. Some of that time may be yielded back. So we would spend the bulk of the day tomorrow on that issue with the vote coming sometime late tomorrow afternoon. I believe the Democratic leader would appreciate it coming later on in the afternoon. We will work with him to get a time that meets with his needs.

Then we would go to some conference reports that may be available. Recorded votes may be requested on those—legislative appropriations, D.C. appropriations. Then we would hope to take up the HUD-VA appropriations bills tomorrow night, and stay with that until we have other conference reports that may be available.

There has been an agreement reached and the conferees' signatures acquired on the health insurance reform package. Senator KASSEBAUM, Senator KENNEDY, many others have done a lot of good work on that. So we should be able to take up that health insurance package on Friday.

I understand agreement has also been reached on the safe drinking water conference report, which is a very important bill. And we have sort of a deadline on that one. If we do not act on it



by Friday, there is some \$725 million that would move over into another fund. So really good work is being done.

Also, there has been a press conference this afternoon with regard to the terrorism task force efforts. We have had our colleagues on both sides of the aisle working with the Chief of Staff and the White House. And they had announced earlier this afternoon, or about 2 hours ago, that they had made substantial progress. We believe we can take up an agreed-to package on the terrorism issue hopefully tomorrow or Friday.

So a lot of good work has been done today. We will have this final vote here hopefully in just a few minutes and begin with welfare reform in the morning. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

#### DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

The Senate continued with consideration of the bill.

Mr. COHEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### AMENDMENT NO. 5146

(Purpose: To prevent the Department of Transportation from penalizing Maine or New Hampshire for non-compliance with federal vehicle weight limitations)

Mr. COHEN. Mr. President, on behalf of myself, Senator SNOWE, Senator SMITH, and Senator GREGG, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. COHEN], for himself, Ms. SNOWE, Mr. SMITH, and Mr. GREGG, proposes an amendment numbered 5146.

Mr. COHEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place:

No funds appropriated under this act shall be used to levy penalties prior to September 1, 1997 on the States of Maine or New Hampshire based on non-compliance with federal vehicle weight limitations.

Mr. COHEN. Mr. President, this is an amendment that pertains to the States of Maine and New Hampshire, dealing with weight limit for trucks.

We have worked in close conjunction with the Senator from New Jersey, the Senator from Montana, and the Senator from Rhode Island. They have

agreed that the amendment should be adopted. It would defer imposition of penalties or the use of funds to impose penalties prior to September 1, 1997.

That is acceptable to both sides.

Mr. LAUTENBERG. Mr. President, I think this is a good solution to a difficult problem. I commend the Senators from New Hampshire and Maine for their cooperation here. We accept it on this side.

Mr. HATFIELD. Mr. President, the amendment has been one of long standing on our list. I am happy to be able to dispose of it.

It has been cleared, as indicated by the Senator from Maine, by the authorizing committees, by the ranking member, as well as the chairman of the authorizing committee, and has been cleared by the two managers.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5146) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. HATFIELD. I move to table the motion.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### AMENDMENT NO. 5147 TO AMENDMENT NO. 5141

Mr. GRAMM. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. BOND, Mr. COATS, Mr. ABRAHAM, Mr. FAIRCLOTH, Mrs. HUTCHISON, Mr. LEVIN, and Mr. WARNER, proposes an amendment numbered 5147 to Amendment No. 5141.

Mr. GRAMM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following:

SEC. . Prior to September 30, 1996, the Secretary of the Treasury and the Secretary of Transportation shall conduct a review of the reporting of excise tax data by the Department of the Treasury to the Department of Transportation for fiscal year 1994 and its impact on the allocation of Federal-aid highways.

If the President certifies that all of the following conditions are met:

1. A significant error was made by Treasury in its estimate of Highway Trust Fund revenues collected in fiscal year 1994;

2. The error is fundamentally different from errors routinely made in such estimates in the past;

3. The error is significant enough to justify that fiscal year 1997 apportionments and allocations of Highway Trust Funds be adjusted; and finds that the provision in B appropriately corrects these deficiencies, then subsection B will be operative.

##### (b) CALCULATION OF FEDERAL-AID HIGHWAY APPORTIONMENTS AND ALLOCATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), for fiscal year 1997, the Secretary of Transportation shall determine the Federal-aid highway apportionments and allocations to a State without regard to the approximately \$1,596,000,000 credit to the Highway Trust Fund (other than the mass Transit Account) of estimated taxes paid by States that was made by the Secretary of the Treasury for fiscal year 1995 in correction of an accounting error made in fiscal year 1994.

(2) ADJUSTMENTS FOR EFFECTS IN 1996.—The Secretary of Transportation shall, for each State—

(A) determine whether the State would have been apportioned and allocated an increased or decreased amount for Federal-aid highways for fiscal year 1996 if the accounting error referred to in paragraph (1) had not been made (which determination shall take into account the effects of section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1921)); and

(B) after apportionments and allocations are determined in accordance with paragraph (1)—

(i) adjust the amount apportioned and allocated to the State for Federal-aid highways for fiscal year 1997 by the amount of the increase or decrease; and

(ii) adjust accordingly the obligation limitation for Federal-aid highways distributed to the State under this Act.

(3) NO EFFECT ON 1996 DISTRIBUTIONS.—Nothing in this section shall affect any apportionment, allocation, or distribution of obligation limitation, or reduction thereof, to a State for Federal-aid highways for fiscal year 1996.

(4) EFFECTIVE DATE.—This section shall take effect on September 30, 1996.

Mr. GRAMM. Mr. President, I think we have put together a good compromise here. It sets up three conditions that have to be met. It mandates that the Secretary of the Treasury and the Secretary of Transportation will look at the issue, which has been raised by our colleague from Montana, and if they make three findings concerning its significance—if the President, based on their study, makes those three findings, then the provision of the Senator from Montana will be offered in the bill. The Senator from Montana has agreed to this amendment. I thank him for working with us on this.

Mr. BAUCUS. Mr. President, this is an accommodation to allow us to proceed with the bill. I think it meets the objective of the Senator from Texas, and as to another look at the degree to which there is an accounting clerical error, it is also significant. It is my view that it is. It is altogether appropriate that we crafted the amendment in a way so that the Senators who were concerned about this issue are better

reassured that this error was, in fact, made.

Second, it accommodates our interests because it is quite clear that an error was made, and I feel quite confident that the administration, in reexamining this, will make the proper certification. Nevertheless, it helps us get a little better record and a better sense of what actually did happen here. That suits the interests of all Senators all the way around.

I thank my colleague from Texas for helping craft this amendment. I urge its adoption.

Mr. COATS. Mr. President, I think it is also important to understand why some of us are so sensitive on issues like this. Coming from a donor State, a State that over the years has consistently contributed substantially more to the highway trust fund than it receives back, we are sensitive about any changes in formulas that result in a further loss of funds to our State.

Now, it appears that a technical error was made and not a formula change. The resulting formula change corrects that area rather than being a formula designed to benefit some States at the expense of others. I think a number of us who come from those donor States—and 16 of the 19 States affected here that lose money are donor States—felt that we needed a certification as to the validity of that particular technical error and the fact that this proposal by the Senator from Montana corrects that error in the correct fashion. So the certification here will allow us to receive that information.

I think it will leave us with some feeling that we are adopting the right procedures here in terms of certifying the accuracy of this.

So I thank the Senator from Montana for his willingness to work with us. I particularly thank the Senator from Texas for his ability to discern and take a complex issue and put it into understandable amendment form in a fairly short amount of time. I thank him for his efforts.

Mr. LEVIN. Mr. President, let me also thank the Senator from Texas, the Senator from Indiana, the Senator from Montana, and others for working on the second-degree amendment.

I have a question of the Senator from Texas.

Does the second-degree amendment make any change in the underlying formula?

Mr. GRAMM. No.

Mr. LEVIN. Let me add one comment and one thought to what the Senator from Indiana said. All but three or four of the States which would lose money if this allocation were made according to the amendment are States which already are ahead of the game. They are donee States—three or four. Those of us that are donor States, so-called, there are 20 of us. When we look at this

kind of amendment and see that, it obviously makes us somewhat skeptical. Again, most of the States by far that would be on the giving end are the same States that already are, under the formula, on the giving end. That may be a coincidence. It may be that the alleged error happened to work out that way.

But I want to join the Senator from Indiana in expressing the sensitivity of the States that already give much more than they get back under the formula.

My question to the Senator from Texas is this: Can he state for the Record what those three findings are?

Mr. GRAMM. Let me get back the copy of the amendment.

The three findings are—let me make it clear because I want to be certain, given what the Senator from Indiana said, we are not making the judgment here of whether or not an error was made. It is my belief that probably is not the case, as the Senator from Montana believes that it was the case. We are setting up objective criteria to have a judgment, so we are not prejudging that based on anything we say here.

Let me just read it.

The Secretary of the Treasury and the Secretary of Transportation shall conduct a review of the reporting of excise tax data by the Department of Treasury to the Department of Transportation for FY '94 and its impact on the allocation of Federal aid highways.

If the President certifies that all of the following conditions are met:

1. A significant error was made by Treasury in its estimate of highway trust fund revenues collected in FY '94;
2. The error is fundamentally different from errors routinely made in such estimates in the past;
3. The error is significant enough to justify that FY '97 apportionments and allocations of highway trust funds be adjusted; and finds that provisions in B—

That is the Baucus amendment. appropriately corrects these deficiencies, then subsection B—

Which is the Baucus amendment. will be operative.

Mr. LEVIN. I thank the Senator.

I ask unanimous consent that I be added as a cosponsor to that second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I ask on behalf of the Senator from Virginia, Senator WARNER, that he be added as a cosponsor to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I join in thanking my colleague from Montana for his willingness to work with us on this amendment.

Mr. COATS. Mr. President, I would also like to add my name as a cosponsor to the Gramm amendment, if I am not already on it.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate on the amendment? If not, the question is on agreeing to the second-degree amendment of the Senator from Texas.

The amendment (No. 5147) was agreed to.

The PRESIDING OFFICER. The question is now on the underlying Baucus amendment, the first-degree amendment.

The amendment (No. 5141) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### SHILOH INTERCHANGE

Mr. BURNS. Mr. President, I would like to discuss the importance of the Shiloh Interchange in Billings, MT.

ISTEA authorized this project for \$11 million. However, since that authorization the cost of the project has increased by an additional \$3 million. The Senator from Oregon is aware of the request I have made to include an additional \$3 million for this project.

Mr. HATFIELD. Yes, you have requested additional funds for this project. However, criteria established in the One-hundred-and-fourth Congress by the Transportation Appropriations Subcommittee of the House precludes me from being able to accommodate the Senator from Montana's request.

The subcommittee has an ironclad rule that no highway projects which are not authorized be included for funding under the appropriations bill. In addition, no increases above the authorized levels will be included. Given the level of single-purpose projects included in ISTEA the ability of the Appropriations Committee to accommodate the Senator's request has been severely reduced, and such adjustments need to be made in the authorizing legislation.

Mr. BURNS. I appreciate the Chairman's clarification and consideration. Have any non-authorized levels for highway projects been included in either the FY96 law or the current bill being considered by the Senate?

Mr. HATFIELD. No, there are no increases above the authorized level in the fiscal year 1996 act or the fiscal year 1997 bill currently under consideration.

Mr. BURNS. I thank the Chairman, and I yield the floor.

#### SURFACE TRANSPORTATION BOARD

Mr. BURNS. Mr. President, as we focus upon the Transportation budget for the upcoming fiscal year, I would like to discuss with you a number of points regarding the Surface Transportation Board [STB] in light of the ICC Termination Act.

The statutorily mandated time frames have been complied with in the latest merger.



The STB should assign a priority to the handling of old cases. For example, those cases pending more than 3 or 4 years before the effective date of the ICC Termination Act. In addition, the STB's own release as to its recent public vote in the Union Pacific/Southern Pacific merger, it was indicated that considerable weight was given to the managerial judgment of the applicants. Since that application had been pending prior to the effective date of the ICC Termination Act, similar treatment should be given to the other long-pending cases.

The STB's policy should be based on the widest perspective as to railroad proposals, be they mergers, constructions, line extensions, or rates, that will benefit area-wide economies in addition to the applicants themselves. Also, the Board should encourage rail proposals compatible with the requirements of appropriate environmental laws and should continue its policy of promoting competition in rail transportation which I believe will benefit the consumer.

Mr. HATFIELD. The Senator's points are well-taken. Long-pending cases of this type should be decided promptly. Such action would be particularly warranted with rail proposals that will benefit area-wide economies, promote competition, or foster the objectives of our environmental laws. I would hope that such public interest considerations would merit early resolution.

Mr. BURNS. I thank the Chairman.

**MICHIGAN TRANSIT PROJECTS IN THE TRANSPORTATION APPROPRIATIONS BILL, FISCAL YEAR 1997**

Mr. LEVIN. Mr. President, my colleague from Michigan and I would like to join the distinguished chairman of the Senate Appropriations Committee in a brief colloquy regarding Michigan transit projects in the bill before the Senate.

We are seeking to resolve the differences between the House and Senate Appropriations Committee reports on Transportation appropriations for fiscal year 1997 that relate to section 3 bus and bus facility funding for Michigan. Hopefully, the proposal from the Michigan Department of Transportation, as embodied in the chart below, can be useful to the conference committee when it meets. I ask unanimous consent that the chart be inserted into the record following our discussion.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEVIN. We have sent the chart to the Michigan House Members whose districts are affected. Because of the short time, explicit support for this arrangement has not been received from all of them. However, this distribution appears to be a fair compromise between the House and the Senate committees report language. Barring any significant objection from Michigan's

House Members, I urge the conferees to retain the total Senate funding level of \$20 million provided for section 3 transit projects and accommodate the distribution in the chart.

I would hope that the distinguished chairman of the Senate Appropriations Committee would do his utmost to preserve the Senate level in conference. As the Senator from Oregon is aware, his State is a donor State like Michigan, and as such, receives less than an even return on the gas taxes contributed into the Highway Trust Fund, from which transit funds are derived. Though that return was improved by ISTEA for highways, States like Michigan, and I suspect Oregon, continue to be significant donor States on transit projects. This formula matter must be addressed when Congress next takes up reauthorization of ISTEA.

Mr. HATFIELD. I appreciate the interest of the Senators and their input in helping to recommend a resolution of the differences between the House and Senate report language on transit projects in Michigan.

Mr. ABRAHAM. I fully support the remarks of my fellow Michigan Senator regarding the unfair distribution of transit funds, and how the Senate must insist on the higher total funding level of \$20 million for the State of Michigan. However, I wish to further elaborate on the distribution of these funds within the State of Michigan.

The Michigan Department of Transportation has provided our offices with a project by project breakdown of this distribution, which Senator LEVIN has introduced. Per the fiscal year 1996 Transportation Appropriations Conference report, the full \$1.23 million final project funding is recommended for the Lansing Intermodal Facility. Furthermore, we, in coordination with the Michigan Department of Transportation (MDOT), recommend that at least \$1.8 million be appropriated for the Grand Rapids Area Transit Authority, and at least \$900,000 to the Kalamazoo Transit Authority for buses and an intermodal facility. Finally, MDOT believes that as a start-up project, no more than \$764,000 is needed for the Dearborn Intermodal Facility. No more than the remaining \$7.13 million, in our coordinated opinion with MDOT, should be appropriated to MDOT for statewide distribution. There are other projects enumerated in the MDOT proposal, which melds the House and Senate marks, which we also believe deserve the designated level of support.

Mr. President, I would ask the chairman of the Appropriations Committee whether he cares to comment on this proposal?

Mr. HATFIELD. Considering the extensive discussions I know the two Senators from Michigan have conducted with their State and local governments over this proposal, I wish to assure both Senators that I will make

every effort to ensure their proposal is given full consideration in conference discussions with the House.

**EXHIBIT 1**

Transit agency	Description	Federal funds
Lansing	Facility	\$1,230,000
SMART	Buses and facility	1,800,000
GRATA	Facility	1,800,000
Flint	Facility	1,800,000
Kalamazoo	Facility	576,000
Dearborn	Buses and facility	900,000
DDOT	Buses and facility	2,000,000
Dearborn	Intermodal facility	764,000
Detroit	Intermodal facility	2,000,000
Subtotal		12,870,000
Total		20,000,000

**ADVANCED TECHNOLOGY BUS**

Mrs. BOXER. Mr. President, I would like to ask the esteemed chairman of the Senate Appropriations Committee, Senator HATFIELD, if he would yield to a question regarding the transportation appropriations bill.

Mr. HATFIELD. I would be pleased to yield to the Senator from California.

Mrs. BOXER. Thank you. I first want to personally praise the distinguished chairman for this appropriations bill which does so much to enhance the safety and infrastructure investment in our Nation's transportation systems. I know the Senator is a long-time supporter of renewable energy technologies and transportation which uses clean fuels that preserve air quality in our Nation's cities.

I am particularly pleased at the committee's decision to approve the President's request for funding the Advanced Technology Transit Bus [ATTB]. This project, under development in Los Angeles, uses the expertise of our defense aerospace industry to build a next-generation transit bus that will run on a variety of clean fuels, will provide considerable maintenance savings to our transit agencies and will provide conveniences for disabled passengers.

The committee included by request for \$13.1 million in bus discretionary funding to deploy five bus prototypes for transit agencies participating in the project across the country. The President had also requested \$6.5 million in his budget to complete the research program under the National Planning and Research budget of the Federal Transit Administration. The committee fully funded the President's request for Transit Planning and Research, but did not specifically refer to the Advanced Technology Transit Bus. As the chairman knows, the prototype development will be dependent on the completion of the research phase.

I ask the chairman whether the Transportation Appropriations committee report excludes support for the ATTB research funding? In addition, since fuel cell technology is one of the propulsion systems proposed for the ATTB, would some funding for the Fuel Cell Transit Bus Program also be available to the ATTB project?

Mr. HATFIELD. I assure my colleague from California that the committee report does not mean the committee does not support research funding for the ATTB. I point out that the report also states that the committee has not earmarked projects mentioned in the House report that are not listed in this report. This action is taken without prejudice to final decisions on project funding that will be made in conference. The fuel cell component of the ATTB is an important part of the project, and I will make every effort to ensure that it is considered for funding.

Mrs. BOXER. I thank the Senator for his support for the research and deployment of the Advanced Technology Transit Bus.

Mrs. FEINSTEIN. I would like to engage in a colloquy with the chairman of the committee to clarify the subcommittee's intent with respect to the committee report language relating to the BART-SFO extension.

Specifically, I would like to address the stipulation contained in the committee report that would prevent the Federal Transit Administration from entering into a full funding grant agreement for the BART-SFO extension until all litigation regarding the project has been resolved. I have very strong concerns that this requirement could result in indefinite delays in the project. Further, I understand Secretary Peña, Governor Wilson, and the Federal Transit Administration [FTA] share these same concerns.

I understand it is not the chairman's intent with this report language to kill this project. Further, the chairman does not intend to impose any restrictions on the BART-SFO extension that have not previously been demanded of this and other transit projects seeking full funding grant agreements from the FTA.

I have a July 30 letter from Secretary Peña stating that the language contained in the committee report could encourage lawsuits and further that he would prefer not to see this language included. I understand the chairman does not intend to encourage frivolous lawsuits with this language, and further, I understand in speaking with the chairman that I can be assured this committee report language will be revised during the conference negotiations with the House to reflect the chairman's intent to move ahead with this project.

Mr. HATFIELD. That is my understanding.

Mrs. BOXER. I ask the President if the chairman would yield to another question.

Mr. HATFIELD. I would be happy to yield to the senator from California.

Mrs. BOXER. We appreciate the chairman's past support for this project and knows he understands the value of providing key connections for transit with other modes of travel,

such as airports. We also appreciate his concerns over local participation in the decision-making for such a project. We would like to remind the chairman that this project has been on the local ballots and approved by our voters on three previous occasions. It enjoys wide community support. We understand from the county counsel of San Mateo County that as of July 16, 1996, any new initiative petition would be too late to qualify for the November 1996 ballot.

Is it the chairman's understanding that the committee report language will not necessitate another vote in 1996 if the time for qualifying such initiative has expired?

Mr. HATFIELD. That is my understanding. I thank the Senators for bringing their concerns to me.

DIGITAL BRITE RADAR INDICATOR TOWER EQUIPMENT (DBRITE) AT THE GAINESVILLE-ALACHUA REGIONAL AIRPORT

Mr. MACK. Mr. President, I would like to engage the Chairman in a brief colloquy on critical issues affecting the Gainesville-Alachua Regional Airport and the State of Florida.

Mr. HATFIELD. I would be pleased to engage in a colloquy with the Senator from Florida on this matter.

Mr. MACK. I would first like to thank the Chairman for his leadership and the fine work of his subcommittee in keeping the highways, railways and airways of this Nation safe and effective in meeting the transportation needs of our citizens.

Mr. HATFIELD. I thank my friend and colleague.

Mr. MACK. I believe you are aware, Mr. Chairman, of the situation confronting the Gainesville-Alachua Regional Airport in their effort to obtain a radar upgrade and the installation of a DBRITE system.

Gainesville was one of four airports specified by Congress in the reports accompanying the fiscal year 1988 and fiscal year 1990 Transportation appropriation bills to receive radar upgrades. To date, all but Gainesville have received radar upgrades. I find it very frustrating that the FAA has not fully implemented the direction in these reports. At the time the FAA requested the DBRITE system, they considered it a crucial safety factor for air traffic utilizing the Ocala, Gainesville, and north Florida region. Now, as a contract tower with 35 percent less manpower, this system appears even more essential. The DBRITE system would provide local controllers with real time pictures of all air traffic in the North Central Region, complementing the capacities and coverage of Jacksonville Airport.

I noted this year's Transportation Appropriations Committee Report contains language encouraging the FAA to honor prior commitments. Accordingly, Mr. Chairman, as it has now been almost 8 years since Congress al-

located funds for Gainesville's DBRITE system, I would expect the FAA to take heed of this language and provide this much needed system to Gainesville-Alachua Regional Airport.

Mr. HATFIELD. Mr. President, I can sympathize with the frustration expressed by the junior Senator from Florida on behalf of the Gainesville/Ocala communities and regional airport. If the FAA had recognized a legitimate need which still exists, I certainly think it appropriate for the FAA to move forward in the delivery of the DBRITE system for the Gainesville-Alachua Regional Airport.

Mr. MACK. Mr. President, as an additional matter, I would like to bring to the chairman's attention another problem confronting the Gainesville-Alachua Regional Airport Authority and the surrounding areas and communities in finalizing their eligible FAA noise grant funding.

I have been informed that as a result of judicial inverse condemnation proceedings, the city was forced to acquire certain properties and relocate former owners and occupants from certain sites covered by Federal Aviation Regulations, Part 150, Airport Noise Compatibility. This action required significant financial commitments from the local authorities, the city of Gainesville, and the Regional Airport Authority which these parties were apparently led to believe would be eligible for reimbursement through the AIP Noise Grant Program.

Would you not concur, Mr. Chairman, that this matter warrants FAA consideration?

Mr. HATFIELD. Mr. President, I can assure the Senator from Florida that I certainly think this is a matter which the FAA should carefully review. And, I look forward to working with him to bring both these matters to a resolution before the Congress finalizes the fiscal year 1997 legislation.

VTS 2000 COLLOQUY

Mr. JOHNSTON. I would like to engage into a colloquy with the distinguished chairman and ranking member of the Transportation Appropriations Subcommittee. Mr. President, I would like to commend the Transportation Appropriations Subcommittee on its committee report which provides funding to complete the final development of the Vessel Traffic System [VTS] 2000. This is a system that is necessary to enhance the safety and environmental quality of our country's vital ports and waterways. In the recent past, and quoted in the committee's report, the GAO has estimated the cost of establishing these VTS Systems at the originally envisioned 17 ports at a cost of up to \$310 million. Through a competitive bidding process and the widespread use of commercial off-the-shelf and non-developmental equipment, the estimated costs have now been dramatically reduced. In fact, recent estimates of the costs are well



below those estimated by the GAO—now less than \$200 million. And that number could be substantially reduced depending on what type of systems are implemented as part of VTS 2000.

Mr. LAUTENBERG. I appreciate my colleague's remarks. The VTS 2000 program was one that we considered very carefully during markup of the Transportation appropriations bill this year. I believe that the VTS 2000 system provides great promise in promoting the safety and environmental protection of our Nation's waterways. The conference committee will indeed consider very carefully during our deliberations these cost issues you have just raised.

Mr. BREAUX. Mr. President, I would like to associate myself with the remarks made by my colleagues regarding the VTS 2000 system. The study which was recently published by the Marine Board of the National Research Council concluded that "there is a compelling national interest in protecting the environment and in providing safe and efficient ports and waterways." and that "VTS can be a significant factor in enhancing the safety and efficiency of ports and waterways . . .". Establishing VTS systems at our Nation's important ports and waterways is absolutely vital. Also, I agree with my colleague that the estimated cost to produce and field the systems has been dramatically reduced. In addition, I would like to highlight the fact that the estimated annual costs to operate the system once it has been deployed have also been greatly reduced. Whereas some have estimated the annual operating costs of a VTS system to be \$65 million, the Coast Guard now believes that those costs will be only \$42 million per year for installation at all proposed posts, which includes the \$20 million currently being spent annually on five operational ports. I would also note that there are a variety of creative ways to meet those annual operating obligations which should be fully reviewed once a final VTS system is proposed.

Mr. LAUTENBERG. Mr. President, I appreciate the very knowledgeable comments of Senator BREAUX. He is correct that there are significant potential cost reductions in both the establishment and operation of the VTS 2000 system. Both of my colleagues can rest assured that I will keep these issues clearly in focus as we deliberate the fiscal year 1997 Transportation appropriations bill in conference with the other body.

Mr. HATFIELD. I also appreciate the very knowledgeable comments of both of my distinguished colleagues from Louisiana. Maintaining the safety and environmental quality of this Nation's waterways remain critically important objectives of this subcommittee. The important cost issues raised by the Senators from Louisiana should be carefully considered by the conference

committee as well as the completion of a final VTS system.

#### MID-AMERICA AVIATION RESOURCE CONSORTIUM

Mr. NICKLES. Senator HATFIELD, I strongly support the Senate report language which opposes the House's earmark of \$1,700,000 for the Mid-America Aviation Resource Consortium [MARC]. In order to fund the facility in Minnesota, the House transferred funds out of the air traffic controller training program from the FAA Academy in Oklahoma City. This is an imprudent transfer of funds to a program which has not received the necessary support to continue.

I refer my colleagues to the conference report that accompanied the fiscal year 1996 bill which stated, "The conferees agree to provide \$250,000 for continued support of the Mid-America Aviation Resource Consortium as proposed by the House, but intend that this be the final year of Federal support for this facility unless requested in the President's budget." Funding for this facility was not requested in the President's fiscal year 1997 budget.

I would like to include in the RECORD a letter from Mr. Richard Sanford, director of the Florida Aviation Management Development Associates, an FAA contractor, to Senator MACK which references the reallocation of \$1.7 million in the House bill. Mr. Sanford writes, "This action, taken against the wishes of the FAA, effectively reduces the [FAA Academy's] budget and directly decrements \$1.7 million from a competitively awarded instructional services contract held by the University of Oklahoma. I am very concerned that this action serves to penalize desired academic/business partnerships in the interests of supporting a consortium whose members have neither competed for the business nor are the FAA's preferred instructional service provider(s)."

I urge Senate conferees on the fiscal year 1997 transportation appropriations bill to insist upon the Senate position.

Mr. HATFIELD. Senator NICKLES, I appreciate your interest in this important issue and your strong commitment to safety training at the FAA. I oppose the House effort to reallocate \$1,700,000 from the FAA Academy to MARC and will remind conferees of the intention of the fiscal year 1996 conference report to terminate funding for MARC. Finally, I will urge the fiscal year 1997 conference to maintain the position outlined in the Senate provision.

Mr. NICKLES. I ask unanimous consent the letter from Mr. Sanford be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FAMDA, A JOINT VENTURE,  
Palm Coast, FL, July 10, 1996.

Senator CONNIE MACK,  
Hart Office Building,  
Washington, DC.

DEAR SENATOR MACK: The Federal Aviation Administration has elected to model partnerships between the Government, academia, and business by awarding both technical and non-technical instructional services contracts to organizations featuring such partnerships. In the technical training area, the partnership with the FAA at the FAA Academy in Oklahoma City is shared by the University of Oklahoma with American Systems Corporation as a subcontractor. In the non-technical area, Florida Aviation Management Development Associates (FAMDA), a joint venture between the University of Central Florida and American Systems Corporation (ASC) supports the Center for Management Development (CMD) in Palm Coast, Florida.

A short time ago, the House Appropriations Subcommittee signed out their appropriations bill which, among other things, directed the reallocation of \$1.7M originally budgeted to support instructional activities at the FAA Academy in Oklahoma City to the Mid-America Aviation Research Consortium (MARC), a group of educational institutions which have positioned themselves to provide technical training support to the FAA. This action, taken against the wishes of the FAA, effectively reduces the Academy budget and directly decrements \$1.7M from a competitively awarded instructional services contract held by the University of Oklahoma. I am very concerned that this action serves to penalize desired academic/business partnerships in the interests of supporting a consortium whose members have neither competed for the business nor are the FAA's preferred instructional services provider(s). I am also mindful that this same flawed strategy could be applied to the Center for Management Development in Palm Coast to the detriment of the University of Central Florida and ASC.

Senator Don Nickles is leading an effort to restore the \$1.7M in funding to the FAA Academy and, ultimately, the University of Oklahoma. I urge you to lend your support to his efforts and favorably resolve this issue in conference. I have attached information which may provide additional insight on this issue.

Thank you for your continued support of CMD and the FAMDA joint venture.

Sincerely,

RICHARD M. SANFORD,  
Managing Director.

Mr. KERRY. This is a good bill, Mr. President, responsibly and carefully assembled by the distinguished chairman, the ranking Democratic member, the subcommittee and its staff. I compliment them on their work and support its passage.

Even so, Mr. President, due to the very difficult budget environment in which we are laboring, this bill does not do complete justice to what I believe are vital transportation infrastructure needs, a reality on which I believe I could find considerable agreement with the chairman and ranking member. For example, Massachusetts and other States need more funding for mass transit and passenger rail than the committee could provide.

Federal funding for Amtrak has declined by approximately one-quarter

since 1995. This year, the Senate bill appropriates \$592 million for Amtrak for 1997 which is \$130 million more than the House provided. I commend the committee for at least including this amount for Amtrak because the House's amount is a slow-motion death penalty. The capital-intensive nature of passenger rail makes it unlikely to survive as a viable transportation mode without some kind of Government support. And I do not know why we find that surprising. We heavily subsidize scheduled air travel, general aviation, and highways. It is entirely appropriate—and beneficial to our Nation—that we subsidize passenger rail.

The United States still falls short among the nations of the world in per capita spending on passenger rail—behind such countries as Belarus, Botswana, and Guinea, not to mention the nations of Western Europe. It is my hope that the Senate position on funding for Amtrak will be sustained in the conference committee to resolve the differences between the bills passed by the House and the Senate. And as a member of the Senate Commerce Committee, which has reported legislation to restructure Amtrak in order to place it on a path toward greater fiscal stability and accountability, I am very hopeful that we can enact reauthorization legislation before the end of the 104th Congress.

I strongly support the Senate actions to fund the Northeast Corridor Improvement Project [NECIP] which is vital to reducing congestion in the corridor and which, in turn, will result in important environmental, energy and employment benefits. We must move ahead with track work, upgrading maintenance facilities and completion of the electrification of the northern section as soon as possible. The \$200 million in funding this legislation provides for NECIP will enable this important work to move forward. Again, I urge the members of the Committee who will be conferees to insist on the Senate position on NECIP in the conference committee. I would like to express my gratitude to Chairman HATFIELD and Ranking Member LAUTENBERG for their continuing and dependable support of NECIP.

Another area of special importance to Massachusetts is mass transit. I cannot avoid being disappointed by this bill's funding level for mass transit operating assistance. Recent cuts in funding have had a devastating effect on mass transit systems in my State. In Massachusetts, statutory caps are imposed on the amount of funding transit authorities can receive from State and local sources. Therefore, cuts in Federal assistance have a direct, immediate, and unavoidable impact on service to seniors, workers and students in my State. Having voiced my concern, I do want to acknowledge that I realize this problem is not attrib-

utable to the will of the subcommittee, its chairman, or its ranking member.

My constituents living and working in the Boston area are very appreciative for the funding included in the bill for the South Boston Piers Transitway, which is a critical component of the State Implementation Plan to comply with Clean Air Act requirements, and is anticipated to serve 22,000 riders daily. The transitway will be integrated with the extensive network of transit, commuter rail and bus service at South Station.

I also appreciate support for the restoration of historic Union Station in Springfield, MA, which will allow for the consolidation of regional transportation services in western Massachusetts in a single intermodal facility for local bus lines, intercity bus systems, trains, taxis, and limousine service. The restoration of the facility will be accompanied by renovation of the facility to accommodate commercial tenancy.

Also welcome is the committee's recommended funding for the development of the Cape Cod Intermodal Center which will accommodate intercity buses, regional buses, local shuttles, intercity trains, Amtrak summer tour trains, and bicyclists and will provide connections to the steamship authority's Hyannis terminal and to Barnstable Municipal Airport.

Once again, I thank the chairman and ranking member, who have labored conscientiously and diligently to do as much good in the transportation arena for the Nation and its people as possible under the budget restrictions imposed on them. I also want to acknowledge with appreciation the work of the staff with whom I am familiar, Pat McCann, Peter Rogoff, and Anne Miano. I offer my strongest encouragement to the conferees the Senate will name to work out differences between the House-passed and Senate-passed bills. This is a good bill, and I fervently hope the conference agreement will contain its best features. It matters to the nation and its people in 1996, and it will matter in the future.

Mrs. BOXER. Mr. President, I would like to speak today in support of the transportation appropriations bill for fiscal year 1997.

I commend the leadership of the Transportation Subcommittee, Chairman HATFIELD and ranking member, Senator LAUTENBERG, for their hard work in fashioning a program of infrastructure investment and safety enhancement with such little resources available to the subcommittee under this budget.

This bill makes considerable improvements over the House-passed legislation. These improvements will provide better air quality, better mobility for our citizens and safer skies. The recent tragedies from the air disasters from Florida and New York sadly un-

derscored the fact that we have not done all that we can to make our skies safer.

I represent a State with 32 commercial airports, including at least half a dozen international airports, that handle more than 123 million passengers a year. So, I have a particularly strong interest in being sure that aviation security is our highest priority in air travel.

As a member of the House Government Operations Committee that held extensive hearings on the Pan Am Flight 103 disaster in 1989, and later as Chair of its Subcommittee on Government Activities and Transportation, I strongly urged greater attention to aviation security.

I want to also add my thanks to the chairman for the increased funding for aviation safety. Funding in the bill will add 250 more air traffic controllers and provide needed investment in our airways infrastructure, including \$1.46 billion in airport improvement program funding. The House provided only \$1.3 billion, a cut of \$150 million from this year's level.

I am particularly pleased that the Senate committee provided the full amount requested by the President for the northern California TRACON. This is the regional radar facility for air traffic. The Senate's funding of the \$8.7 million requested keeps this facility on track for commissioning in November 2000.

The Senate bill also provides \$3.1 million for the precision approach path indicators, a state-of-the-art navigational systems for our airports. This funding will enable the Los Angeles company which manufactures this equipment to keep their production lines open.

I also believe ocean traffic safety will be enhanced by a provision that would prohibit funds to prohibit the Coast Guard from implementing regulations that would permit vessels to operate with a narrower margin of safety between Santa Barbara and San Francisco. This is a high-traffic area, particularly for oil tankers. The provision prohibits a vessel traffic safety fairway which is less than 5 miles wide. I authored a similar provision as a Member of the House. It makes good sense.

On enhancing trade, the Senate could do no better than its support for the Alameda transportation corridor. The Senate Appropriations Committee's support for the Alameda corridor project was our last major hurdle for moving this major trade project forward.

Last year in the National Highway System bill, we declared the project a "high priority corridor," eligible for a Federal loan. We worked with the President's top financing and transportation experts to fashion a loan package, and the President requested the \$59 million appropriation to pay the



subsidy cost for a \$400 million loan for the \$2 billion project.

The House supported that program, and now we have the Senate on board. The House and Senate approach the loan in different ways. Although this is not the approach that I would have recommended, Senator HATFIELD preferred using part of the funds provided under the State infrastructure bank program to provide a direct Federal loan for the project instead of the House's plan under the Federal Railroad Administration's loan guarantee program.

We can work out the best approach in conference. But there is no doubt that the House and Senate, Democrat and Republican, mayors of Long Beach and Los Angeles and the Governor of California and the President of the United States all support \$59 million in Federal seed money to build this project. It will eliminate more than 200 intersections with the rail link to the largest port complex in the United States, the ports of Los Angeles and Long Beach. It will provide a modern gateway to Pacific Rim trade for our exporters across the country.

The Senate bill provides \$234 million more for transit than the House bill, including \$134 million more for local rail systems. Each weekday more than 6.8 million commuters use some form of transit, eliminating the need for more than 1,000 lanes of urban highways. I think that is a good investment in terms of improved air quality and economic productivity for our people.

The bill provides needed transit investment for California communities, including \$5.5 million for a new transit center for Stockton which will anchor its major downtown redevelopment plans and \$2.5 million to consolidate several, duplicative transit operations around Lake Tahoe into an efficient system using the latest in intelligent transportation technology. The bill provides \$3 million for the Los Angeles Neighborhood Initiative and \$600,000 for a new multimodal transit center in Thousand Oaks.

I am particularly pleased at the committee's decision to approve the President's request for funding the advanced technology transit bus. This project, under development in Los Angeles, uses the expertise of our defense aerospace industry to build a next-generation transit bus that will run on a variety of clean fuels, will provide considerable maintenance savings to our transit agencies and will provide conveniences for disabled passengers.

The committee included my request for \$13.1 million in bus discretionary funding to deploy five bus prototypes for transit agencies participating in the project across the country.

Do I agree with everything in this bill? No, of course not. We do not meet the President's request for operating money for the Federal Aviation Admin-

istration. On the transit side, I am troubled by the freeze on operating assistance and the low funding for our major fixed rail transit projects in San Francisco and Los Angeles.

I am particularly concerned over the language in the Committee Report for the Bay Area Rapid Transit project to link up with San Francisco International Airport. I appreciate the chairman's generosity in personally meeting with me and Senator FEINSTEIN to hear our request for funding. Although the committee provided \$20 million for the Bay Area rails program, it included harsh and overly restrictive report language.

I believe it is well within reason to restrict Federal funding until BART has presented a detailed financing plan and met all local funding commitment criteria. However, to hold up a full funding grant agreement "until all litigation regarding this project is resolved" is highly unrealistic. This language must send a chill down the spine of every major transit general manager. What project is next? Lawsuits are not uncommon on any public works project, and there are legal avenues already available particularly to address the environmental impact issues.

I ask unanimous consent to have printed in the RECORD a letter from Mr. Gordon Linton, administrator of the Federal Transit Administration, in this regard.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT  
OF TRANSPORTATION,  
FEDERAL TRANSIT ADMINISTRATION,  
Washington, DC, July 31, 1996.

Hon. MARK O. HATFIELD,  
Chairman, Committee on Appropriations, U.S.  
Senate, Washington, DC.

DEAR CHAIRMAN HATFIELD: I write to express concern about language in the Senate report accompanying the fiscal year 1997 U.S. Department of Transportation and Related Agencies Appropriations Act that would prohibit the Federal Transit Administration (FTA) from executing a Full Funding Grant Agreement or issuing a Letter of No Prejudice for the Bay Area Transit District's extension to San Francisco International Airport (the "SFO extension") "until all litigation" against the project "has been resolved..." For the reasons presented below, I respectfully request that this language be deleted in conference.

First, let me emphasize that, for good reason, no such directive has been applied to any fixed guideway project in FTA's thirty-five year history. All large transit projects, like all large public works projects, are inevitably the subject of some litigation. We cannot expect otherwise. Indeed, all Federal transit grantees undertaking new starts set aside contingency line items in their budgets to finance the litigation they can and should anticipate in the ordinary course of business. Resolution of such litigation often takes many years.

The language in the Senate report would require that a \$1.2 billion investment in economic growth, congestion mitigation, and enhanced mobility for the Bay Area some-

how proceed with no grievances against the project from contractors, suppliers, property owners, competing providers of transportation, or interested parties opposing the project. Whatever the intent, the language would hold the BART SFO extension hostage to any party making a claim—whether meritorious or spurious—against the project for the purpose of extracting money or other concessions from BART and Federal and local taxpayers.

Second, notwithstanding the persistent threats of environmental litigation against the SFO extension, both FTA and BART have every confidence in the adequacy of our environmental studies for this project and in our compliance with the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and all other applicable Federal and local environmental law and regulations. Let me assure you that there has never been a transit project that was the subject of NEPA and CEQA documents so thorough and voluminous as those for this project.

Finally, the selection of the locally preferred alternative for the SFO extension was the result of a very open, vigorous, and lengthy debate. Clearly, not everyone will be pleased with the tough decisions that must be made to pursue a project so vital and visible as this one; such is the nature of the transportation industry and the legacy of the Federal transit program's reliance on local decisionmaking to best serve a locality's needs. Litigation against a project ought to stand or fall on its own merits in the courts; it ought not be allowed to skew the orderly, even-handed development of legislation for the Federal transportation programs.

I have sent a similar letter to Congressman Wolf. Please let me know if I can be of any assistance in this matter.

Sincerely,

GORDON I. LINTON.

Mrs. BOXER. I look forward to continued conversations with the chairman and BART officials to bring some better understanding of their respective concerns before the Senate completes a conference report on the bill.

I also look forward to further conversations on how we can increase funding for the Los Angeles Red Line extension. The \$55 million provided in the bill will have a serious impact on the project's construction schedule. The amount is about a third of the President's request. The shortfall could lead to \$300 million in cost increases from delays. More than 5,000 jobs would be lost. Ultimately, this shortfall will lead to slower highway speeds and costly delays that our stressed Los Angeles highway network and its commuters can hardly sustain.

We still have more work to do in conference to improve the infrastructure investments for California. Overall, the Senate bill provides greater help for my State, and I am hopeful these last few differences can be settled so we can send the bill to the President for his signature.

Mrs. MURRAY. Mr. President, I rise today in strong support of the transportation appropriations bill. I want to applaud Senators HATFIELD and LAUTENBERG for their strong leadership

over an area of increased competition for fewer dollars.

This legislation though, is bitter-sweet, as it marks the final transportation bill for Chairman HATFIELD. My neighbor to the south has been a compassionate champion for our Nation's infrastructure. The loss to this body and the Pacific Northwest will be felt for a very long time.

The State of Washington has witnessed tremendous growth over the last decade, accompanied by traffic congestion on roads that have not kept pace with this region's large influx of residents. I am pleased that this bill seeks to accommodate much of that growth within the Puget Sound region.

The committee has included funds which support a commuter rail service between the cities of Everett, Seattle, and Tacoma. This line would form the foundation for a larger regional transit service in the Puget Sound that is set for a vote this November. This commuter service would operate trains on existing track between the most heavily populated centers of Washington State.

The committee also included funding to aid commuters traveling from suburban cities to downtown Seattle. These funds will enable King County Metro to connect the cities of Kenmore, Redmond, Renton, Tukwila, and Auburn with Seattle, through smaller neighborhood buses that meet larger commuter buses heading into the city.

Further, I am thrilled that the bill has included funds that support a comprehensive transportation solution to congestion around the Kingdome and new baseball stadium. Together with King County, the city of Seattle, the Washington State Department of Transportation, the Port of Seattle, the Baseball Stadium Public Facilities District and Burlington Northern-Santa Fe Railroad, these dollars will create a transit center facilitating access for both transit and pedestrians through the area.

Last, Mr. President, I wanted to commend the committee for allowing Wenatchee to finish construction on the Chelan-Douglas Multimodal Center. The city of Wenatchee and Link Transit Systems have been working on the Multimodal Transportation Center project for 3 years. These funds will finish construction on the project and improve pedestrian and bicycle access.

All of these projects utilize several different modes of transportation to more quickly and efficiently move our growing population. I appreciate the committee's hard work in light of difficult budget choices and urge my colleagues' support of this critical appropriations bill.

Mr. DOMENICI. Mr. President, I rise in support of the Department of Transportation and Related Agencies appropriations bill for fiscal year 1997.

I commend the distinguished chairman of the Appropriations Committee

for bringing us a balanced bill considering the current budget constraints.

The Senate reported bill provides \$12.6 billion in new budget authority [BA] and \$12.3 billion in new outlays to fund the programs of the Department of Transportation, including federal aid highway, mass transit, and aviation activities.

When outlays from prior-year budget authority is taken into account, the bill totals \$12.6 billion in BA and \$36.1 billion in new outlays.

The subcommittee is essentially at its 602(b) allocation in both BA and outlays.

The Senate reported bill is \$184 million in outlays below the President's 1997 request. The bill does provide for the President's request of \$250 million for state infrastructure banks.

The Senate reported bill is \$240 million in BA below the House version of the bill. Both House and Senate bills provide the same amount of outlays.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSPORTATION SUBCOMMITTEE—SPENDING TOTALS—  
SENATE-REPORTED BILL—FISCAL YEAR 1997  
[In millions of dollars]

	Budget authority	Outlays
<b>Defense discretionary:</b>		
Outlays from prior-year BA and other actions completed		37
H.R. 3675, as reported to the Senate		
Scorekeeping adjustment		
Subtotal defense discretionary		37
<b>Nondefense discretionary:</b>		
Outlays from prior-year BA and other actions completed		23,748
H.R. 3675, as reported to the Senate	11,950	11,668
Scorekeeping adjustment		
Subtotal nondefense discretionary	11,950	35,416
<b>Mandatory:</b>		
Outlays from prior-year BA and other actions completed		602
H.R. 3675, as reported to the Senate	608	602
Adjustment to conform mandatory programs with Budget Resolutions assumptions	-3	
Subtotal mandatory	605	602
Adjusted bill total	12,555	36,055
<b>Senate Subcommittee 602(b) allocation:</b>		
Defense discretionary		37
Nondefense discretionary	11,950	35,416
Violent crime reduction trust fund		
Mandatory	605	602
Total allocation	12,555	36,055
<b>Adjusted bill total compared to Senate Subcommittee 602(b) allocation:</b>		
Defense discretionary		
Nondefense discretionary		
Violent crime reduction trust fund		
Mandatory		
Total allocation		

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. DOMENICI. Mr. President, I support the bill and urge its adoption.

Mr. HATFIELD. Mr. President, I know of no further amendments to be offered.

I ask for third reading of the bill.  
The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read for the third time, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON], the Senator from Arkansas [Mr. PRYOR], and the Senator from Illinois [Mr. SIMON], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—95

Abraham	Feingold	Lott
Akaka	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frahm	McConnell
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Boxer	Gramm	Murray
Bradley	Grassley	Nickles
Breaux	Gregg	Nunn
Brown	Harkin	Pell
Bryan	Hatch	Pressler
Bumpers	Hatfield	Reid
Burns	Heflin	Robb
Byrd	Helms	Rockefeller
Campbell	Hollings	Roth
Chafee	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Shelby
Cohen	Jeffords	Simpson
Conrad	Kassebaum	Smith
Coverdell	Kempthorne	Snowe
Craig	Kennedy	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Thomas
DeWine	Lautenberg	Thompson
Dodd	Leahy	Thurmond
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Exon		Wyden
Faircloth		

NAYS—2

Kyl	McCain
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NOT VOTING—3

Johnston	Pryor	Simon
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The bill (H.R. 3675), as amended, was passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Now, Mr. President, I move that the Senate insist on its amendments, request a conference with the House of Representatives on the disagreeing votes of the two Houses,



and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. HATFIELD, Mr. DOMENICI, Mr. SPECTER, Mr. BOND, Mr. GORTON, Mr. SHELBY, Mr. LAUTENBERG, Mr. BYRD, Mr. HARKIN, Ms. MIKULSKI and Mr. REID conferees on the part of the Senate.

Mr. HATFIELD. Mr. President, I want to call attention to a matter relating to one of our staff people, Pat McCann, who is the staff director for the majority party. He is a very interesting person who has been on this committee, the transportation subcommittee, for 13 years. It is illustrative of another matter, and that is how our committee must operate on a bipartisan basis.

When we bring a bill to the floor we have to have comanagers, in which the ranking member and whoever he or she may be, a Democrat and a Republican, and the Chair, have to have agreed to the bill and therefore present a united front. I say this is unusual about committees in the Senate, but we are the only committee that has to report bills by law. We have to keep this country going and, therefore, we have to report 13 bills, come whatever may.

I happened to be chairing the Appropriations Committee in a previous cycle, from 1981 to 1987. I, at that time, had an opportunity to hire on the committee Pat McCann, as the Republican majority at that time. But subsequent chairmen of that committee, the full committee, Senator Stennis and Senator BYRD, followed the same pattern that I followed and that is that we do not wipe out our staff in each election cycle, because they are truly professionals, serving both sides of the committee. So Pat McCann continued on in that professional role.

My immediate predecessor, Senator LAUTENBERG, now the ranking member, as the chairman of that subcommittee, continued Pat McCann, and Anne Miano, our assistant staff director, was hired by Senator D'AMATO when he chaired that particular subcommittee. As it was with Peter Rogoff, who is now the staff director for the minority. They continued all through these various changes of party and majorityship.

So I not only pay tribute to Pat McCann for his faithful service, totally professional service that he has provided the committee, but to all the staff on our particular committee.

I thank also at this time the outstanding work of Senator LAUTENBERG. We could not have brought this bill to the floor without Senator LAUTENBERG's leadership, and we could not have resolved the many conflicts and problems that we faced in this committee.

Again, I say to Anne Miano, Peter Rogoff, Pat McCann that we only are able to do this when we have this kind

of staff. We look good, and at the same time we have to realize it is more than just our charming personalities. It is the fine work of staff that has made possible the producing of this bill.

So I just want to call attention to Pat's leaving of the Senate. He is going to move through the conference with us. By the time we get that conference report back here, he will probably be up in the balcony, up in the gallery. I hope he is not editorializing verbally up there as we proceed with the conference report, because I expect it to be of such quality that we will be able to pass it with a voice vote within a very, very brief time.

I thank the Chair.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I, too, want to add some words of commendation and appreciation to the staff, particularly on this occasion when Pat McCann will have seen the last transportation appropriations bill that he is going to have to work on. I reminded him, sometime he is going to look back here, where it is a quarter to 10 at night, he has not had dinner, has not seen his family, he has not been able to watch the Olympics, how much he is going to miss this place. He started to weep, and I could see a tear fall down his cheek, but he will be strong.

On a serious note, Pat's service has been truly exemplary of bipartisanship. He came to me as a Republican, stayed with me as a Republican and left as a Republican. That is really bipartisan. But we have worked very well together—again, trying to be serious, Pat and Peter, the two senior people on each of the subcommittee staffs, the majority and the minority, have given loyal service wherever and whenever called upon to do so.

We are going to miss Pat. He brings a special touch and a good sense of humor and knows the subject extremely well, and he had the good judgment to send his daughter to college in New Jersey. Princeton, of course, is a nice place to have a child. Mine didn't go there. He felt it was too close to dad or too close to home. Pat has been a marvelous, marvelous influence on staff and on Members as well.

So it is with other members. Peter Rogoff is really busy these days. We learned the difference between being in the majority and being in the minority. It is numbers of people that you have to do the job. Peter has been a very able assistant throughout this.

I thank also Anne Miano. I have gotten to know Anne over the years and watched her approach motherhood and do that very well, while also staying on top of the work she has here.

Joyce Rose who has been helpful, Carole Geagley and Mike Brennan, his first time on the bill. To all the staff,

my deepest appreciation and thanks for a good job.

When I look at how complicated things are right now and see how sparse the funding for major, significant programs has become, we just dealt with over 37 billion dollars' worth of funding, very important transportation programs dealing with aviation, highways, rail, Coast Guard, and I think have done it with balance and with consideration for the value of all of the programs.

That resulted, Mr. President, from the influence of Senator HATFIELD, his leadership, his constancy, his conscientious belief that things have to be right among all, not just a few. It has enabled me to feel very good and feel like a full partner, though in the minority status and throughout the negotiation and the planning and the hearings and the markup of this bill.

So, we note with a degree of sadness, though he will be here with other bills, this is the last time that we will have Senator HATFIELD's valued hand as chairman. I hope, too, the conference will go through on a voice vote and, as a tribute to MARK HATFIELD, perhaps I can call on the goodness of the hearts of our colleagues to do it just that way.

As a friend, as a leader, as an outstanding citizen and American, MARK HATFIELD has been an enlightenment for many of us and particularly for me in the years I have had a chance to work with him.

We close this bill hoping our colleagues are satisfied with the job we have tried to do as best we can. I thank the Chair.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

#### MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### NOMINATIONS OF ADM. JAY L. JOHNSON, U.S. NAVY, TO BE ADMIRAL

Mr. THURMOND. Mr. President, this is a joint statement by Senator NUNN and myself on behalf of the Committee on Armed Services.

Today, the Armed Services Committee voted unanimously to favorably report the nomination of Adm. Jay Johnson for reappointment to the grade of admiral and assignment as the Chief of Naval Operations.

The vote followed both a closed session and an open hearing of the Committee on Armed Services in which the Members considered information provided by the Department of Defense

relevant to admiral Johnson's qualifications to be Chief of Naval Operations.

During the hearing, Admiral Johnson discussed his attendance at Tailhook. In addressing the Committee he stated, "While I can't change the past, I can—and did—learn from it; so did the rest of the Navy. I was cautioned by the Secretary of the Navy for not being proactive in monitoring the conduct of junior officers and not taking effective action to prevent misconduct at Tailhook '91. Because I was there and have seen and felt first hand how much Tailhook hurt our great Navy, I am even more committed to ensuring that such an atmosphere will never again be tolerated."

Information provided by the Department of Defense relevant to the nomination is available at the Committee Office for review personally by Senators.

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, July 30, the Federal debt stood at \$5,183,982,827,241.61.

On a per capita basis, every man, woman, and child in America owes \$19,532.86 as his or her share of that debt.

#### FULL HONOR REVIEW AND AWARD CEREMONY FOR SENATOR SAM NUNN

Mr. WARNER. Mr. President, history will record Senator SAM NUNN's distinguished public service with many chapters. There are, I am certain, more to come covering future challenges he will accept.

None, however, will be more important, more meaningful to him, than his ever vigilant concern for the men and women of all ranks of the armed services.

I can attest to his work, for I was privileged to serve on the Armed Services Committee for 6 years, when Senator NUNN was chairman, as the ranking Republican.

We were partners and a very high degree of bipartisanship prevailed among all members.

One of the many tributes to his service on this committee was paid to Senator NUNN on July 12, 1996, with a Trooping of the Colors by the troops for their chairman.

I ask unanimous consent to have printed in the RECORD remarks made on this memorable auspicious occasion.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### FULL HONOR REVIEW AND AWARD CEREMONY FOR SENATOR SAM NUNN AWARD NARRATIVE

For exceptional and outstanding service as Chairman, Ranking Member, and Member of

the Armed Services Committee of the United States Senate from 1972 through 1996.

Senator Nunn has been the leading legislative voice on national security issues during a period of extraordinary change and challenge for the Department of Defense. With his unparalleled knowledge of national defense and foreign policy issues, his contributions to the security and well-being of our Nation are profound. His clear and eloquent voice has focused public debate on defining the vital interests of the United States, and promoted a strong defense and peace for future generations.

Senator Nunn has taken the initiative in authoring and sustaining legislation that has strengthened the morale and welfare of our men and women in uniform and their families, including the Nunn-Warner increases in military pay and benefits in 1980 to put the All-Volunteer Force on a sound footing, the Persian Gulf benefits package for the men and women who fought in Operation Desert Storm, and the post-cold-war transition benefits for military personnel, Department of Defense civilians, and defense industry employees.

Senator Nunn co-authored the Nunn-Lugar Cooperative Threat Reduction Program which has reduced significantly the threat of nuclear war by providing incentives for the states of the former Soviet Union to dismantle their arsenals.

Senator Nunn played a critical role in the development of the Department of Defense Reorganization Act of 1986, creation of the combatant command for special operation forces, enactment of the Federal Acquisition Streamlining Act of 1994, establishment of cooperative acquisition programs with our NATO allies, passage of legislation to facilitate cost savings through the closing of military bases, and in the development of the annual National Defense Authorization Acts.

At the request of President Clinton, he accompanied former President Jimmy Carter and retired General Colin Powell to Haiti during the 1994 crisis, where he helped to achieve an agreement that averted a military confrontation.

Senator Nunn has consistently articulated his views in a bipartisan manner that recognizes and sustains the traditional values of military service, duty, and patriotism. His achievements and dedication represent the highest traditions of government and public service, and reflects great credit upon himself, the Department of Defense, and the Congress of the United States. For these and his many other contributions, I take great pleasure in presenting Sam Nunn the Department of Defense Medal for Distinguished Public Service. [Applause]

Secretary Perry: Less than a mile up the Potomac River from here on Roosevelt Island are inscribed these words of President Theodore Roosevelt: "In popular government, results worth having can be achieved only by men who can combine worthy ideals with practical good sense." For more than two decades, our government has been blessed with the worthy results achieved by a man known for combining worthy ideals with practical good sense. That man is Senator Sam Nunn.

Worthy ideals and practical good sense are the hallmarks of each of Sam Nunn's many achievements. In 1991, Senator Nunn had the practical good sense that the world would be a much safer place if the thousands of nuclear weapons in the former Soviet Union were dismantled and safeguarded. He combined that practical good sense with worthy ideals, and along with Senator Richard

Lugar, created the Nunn-Lugar program. This program has been a remarkable success.

Perhaps the most compelling Nunn-Lugar success story is centered on the Ukrainian town of Pervomaysk, which once housed 700 nuclear warheads, all of them aimed at targets in the United States. I have visited Pervomaysk four times in the last two years. The first visit was in March 1994, just after we signed the Trilateral Agreement, when I looked down into a nuclear missile silo and saw the missile, then saw the first batch of warheads on the way out. On my fourth visit this June, I joined the defense ministers of Ukraine and Russia in planting sunflower seeds at the site. By harvest time, that former missile field will be a productive sunflower field.

Thanks to the vision of Senator Sam Nunn, over 4,000 nuclear warheads have been removed from deployment and more than 700 bombers and ballistic missile launchers have been dismantled. Ukraine is now nuclear-weapons free. Kazakhstan is already weapons free and Belarus will be nuclear weapons free by the end of the year.

The worthy ideals and common sense that lie behind the Nunn-Lugar program, are emblematic of Senator NUNN's entire career in the U.S. Senate. He has applied these traits to making America safer and stronger. He was the unsung hero of the Goldwater-Nichols Act. Sam never minded being unsung, but I think today we ought to sing him. And—

[Applause]

—I believe the Goldwater-Nichols Act is perhaps the most important defense legislation since World War II. It dramatically changed the way that America's forces operate by streamlining the command process and empowering the Chairman of the Joint Chiefs of Staff and the unified commanders. These changes paid off in the resounding success of our forces in Desert Storm, in Haiti, and today, in Bosnia. Sam Nunn provided much of the thinking and logic behind the legislation and was the persuasive force behind its passage into law. I will always think of it as the Goldwater-Nichols-Nunn legislation.

Throughout his career, Senator Nunn left his mark throughout the U.S. Armed Forces. In the 1970's and the 1980's, he championed the stealth technology that helped win the Gulf War. In the 1990's, he led the fight for acquisition reform, ensuring that our forces get the best equipment, at the best price, at the quickest time. And he's been a strong advocate of making the most use of the Guard and Reserve and their unique talents and resources.

And nobody—I mean nobody—has done more for our men and women in uniform than Sam Nunn. He knows that they are the ones we count on to keep our country safe. And he's worked tirelessly to help build our quality force. Thanks to his efforts, we now have the best force in our history and the best force in the world. I have seen that quality force in action everywhere I've traveled. I've seen it at the DMZ in Korea, on the carriers in the Med and along the zone of separation in Bosnia.

I visited our IFOR troops in early January. It was the day after we opened up the Pontoon Bridge over the Sava River on the Bosnia border. The tanks and the Bradleys were rolling across the bridge and General Nash, General Joulwan, General Shalikaskvili and I decided that our entry to Bosnia would be on foot. And we decided to walk across the Sava River bridge from Croatia into Bosnia. Halfway across, we met some of the combat engineers who built the bridge, still working



on finishing up some of the details. One of them was Sergeant First Class Kidwell, who stepped forward and said his enlistment was up and he wanted to reenlist. After all he and his comrades had been through to build this bridge—the bitter cold, the flooding of epic proportions, the danger of land mines—this sergeant still wanted to reenlist.

And so we swore him in for another four years in the Army, right there in the middle of the Sava River bridge. And I can tell you I have never been more proud of our Armed Forces than at that moment. And that moment—[Applause]—that moment is a tribute to Sam Nunn and to the quality force he has fought to build.

Today, the Department of Defense is thanking Senator Nunn, through his Distinguished Public Service Award. And to this award, I want to add my personal thanks. Three-and-a-half years ago, as I was considering whether or not to return to public service and to Washington, I consulted Senator Nunn. He urged me to accept the job as Deputy Secretary of Defense, and he talked about the exciting opportunities to improve the security of our country. And as I weighed my decision, one of the big pluses in my thinking was the opportunity to work with a public servant as intelligent, thoughtful, and courageous as Sam Nunn.

Well, this is Sam Nunn's last year in the U.S. Senate, but his influence will last for decades to come. He influenced the Senate and the Department of Defense. He's influenced the Nation. He leaves a magnificent legacy; a legacy of wisdom, tenacity, vision, and patriotism; a legacy which will make our world a better and safer world for our children and our grandchildren. Thank you, Senator Nunn.

[Applause]

General Shalikashvili: Senator Nunn, Mrs. Nunn, distinguished guests, let me begin by congratulating these magnificent soldiers, sailors, airmen, marines, and coast guardsmen standing in front of you.

[Applause]

My thanks to you. You've really made this day very, very special.

Now, in ancient times, the purpose of parades was for soldiers to come together in a very formal way to honor a man of very great status. And that very much is the purpose of this ceremony today—to honor a most remarkable man and to thank him for 24 years of service in the U.S. Senate.

President Theodore Roosevelt had a favorite admonishment—a warning really—a warning that you cannot spread patriotism too thin. Surely, as much as any American alive today, Sam Nunn has painted a picture—a vibrant canvas of patriotism—a canvas unstained by partisanship or personal gain, or even personal pride. But painted, instead, with broad brush strokes of wisdom, of conscience, of love for his country and of heartfelt love for the men and women in uniform. He has sat through year after year, for over two decades, of endless hearings and briefings, of going on trip after trip, listening to the needs and requests from our country's senior military and defense officials—always patiently, always with the courtliness for which he's so well known. And always it has been with the dedication to ensure that our policies are correct, that are plans are well-conceived, and that our military has the resources to remain the finest and most capable military in the world.

It has been said of him, that on issues of national security, Sam Nunn is the E.F. Hutton of the Hill. Well, actually, he's bigger than that. People not only eavesdropped to

hear his views, they sought his views. [Applause]

There is an old saying that if you want peace, then you must understand war. It is a dictum that Sam Nunn has spent his career heeding—to the great benefit of his fellow Americans and of every American that's worn the uniform during his 24 years in the Senate.

I, for one, will greatly miss his counsel, his support, and his friendship and his unyielding efforts to maintain the Armed Services Committee as a serious body where issues of national security receive a fair and open hearing, and where wisdom and conscience, rather than partisanship, rule.

Senator Nunn, on behalf of the Joint Chiefs of Staff and on behalf of every man and woman in uniform, I thank you and I salute you. And I also suspect, indeed, I sincerely hope, that your voice and your counsel and your service will remain a national asset for a long, long time to come. My thanks to you. [Applause]

Senator NUNN: Secretary Perry, General Shalikashvili, members of the Joint Chiefs, Department of Defense personnel, Chairman Thurmond, my colleagues in the Senate and House and staffs—we should never forget them—distinguished ambassadors, men and women of our military service, members of my family and many friends.

From the bottom of my heart, I thank you for this great honor, for this medal and for this ceremony. Colleen and I will cherish this day, this parade, this ceremony, and we will remember it forever. Chairman Carl Vinson, my great-uncle, upon the christening of the nuclear aircraft carrier named in his honor, stated, "My star has reached its zenith." I feel that way today, Secretary Perry, General Shali and all of you gathered here.

Secretary Perry and General Shali, your remarks were so laudatory that I may change my mind and follow in the footsteps of Senator Strom Thurmond by becoming a write-in candidate for the U.S. Senate. [Applause]

Congress has no higher responsibility than its duty under our Constitution to provide for the common defense. That is our constitutional charge. During my quarter century in the Senate, my greatest sense of satisfaction has been working with our outstanding men and women in uniform that serve our Nation all over the world, as well as the personnel in the Department of Defense. To those who proudly marched in today's parade and to your comrades in arms who are on duty around the world—those of us in the Congress of the United States, and I think I can speak for everyone on both sides of the aisle, we are very proud of you and we are very proud of your families and we are proud of the job you do for the American people.

When I look around this audience, I feel like a pupil standing with gratitude before his mentors, his teachers and his heroes.

Secretary of Defense Bill Perry is all three. He has matched his technological genius with his dedicated commitment to the well-being of our men and women that serve our Nation in uniform. His personal integrity and his ability to explain complex issues in understandable terms is particularly valued by those of us whose VCRs are always blinking at 12 o'clock. [Laughter]

Secretary Perry's ability to judge character and leadership is exemplified in his choice of General Shalikashvili to head our Nation's armed forces. General Shali, we are grateful for your outstanding career and

most of all we are grateful for your leadership of our military and for your example to the young people in the military and all young Americans.

When I see here today the Under Secretary for Acquisition and the Vice Chairman of the Joint Chiefs, I am reminded of 1977 when then Air Force Colonel Paul Kaminski and his assistant, then Major Joe Ralston, were driving Arnold Punaro and me on a cloak-and-dagger route to see the then highly-classified Stealth fighter at a clandestine location which could not be mentioned to anyone. The reason the F-117 stayed secret so long is that these guys couldn't find the base. [Laughter]

We ended up calling for help at a McDonald's pay phone. There was, however, no doubt about their ability to keep a secret. Perhaps, that is why they are such good leaders today.

When I see retired General James Hollingsworth, my dear friend, in the audience, it brings back memories of his outstanding leadership in Korea and his leadership in the fundamental strengthening of our NATO posture at a very crucial time in our history. Thank you, Holly.

When I see one of my great friends and teachers, Jim Schlesinger, former "Secretary of Everything," I am reminded of his enormous contributions to our national security for the last four decades. Jim continues to be America's intellectual "pillar of iron" on matters of national security and foreign policy.

I also think back today to the courageous leadership of General David Jones, former Chairman of the Joint Chiefs; General Shy Meyer, the head of the U.S. Army; as well as Admiral Bill Crowe, now Ambassador, in leading the way toward fundamental Department of Defense reorganization which has paid off big-time as Secretary Perry has already mentioned. I also recall my good friend, the late General Dick Ellis, who as commander of the Strategic Air Command, prepared the foundation for much of the work I have done in risk reduction and non-proliferation. John Warner remembers that well because he was my partner in that endeavor.

I am reminded of industry giants like David Packard who recently passed away and others like him in industry today—many of whom are in this audience—who have led the way in making America the technological superpower of the world.

I think today of our excellent Committee staff who have assisted me and the Senate for the last 24 years, indeed, assisted all of us in the Congress, led by Staff Directors like Ed Braswell, Frank Sullivan, Rhett Dawson, Jim Roche, Jim McGovern, Carl Smith, Pat Tucker, Dick Reynard, Les Brownlee and, of course, Arnold Punaro, who likes to be called general. These staff directors and those who serve with them are the unsung heroes of America's military strength. They work day and night. They are assisted every day by outstanding people on our personal staffs. Many of those are here today. I will not try to call all of their names, but I am indebted to them and they know it.

There are two important footnotes to every national security improvement in which I have been involved. First, I take full responsibility for my mistakes and my bad ideas. No one else is responsible for those. But all of my good ideas were inspired by our men and women in uniform like those who stand so proudly here today. I have been the beneficiary of the leadership, guidance, advice and support of Senators like Senator

John Stennis, Senator Scoop Jackson, and Senator Robert Byrd, as well as my other colleagues on the Armed Services and Appropriations Committees and my many friends in the House of Representatives. That's the first footnote.

My second footnote, I believe, is of some relevance in this era of unfortunate but increasing political party warfare. And that's what it is. Each time I have been involved in a major national security initiative, it has been with a Republican partner.

From Barry Goldwater and Strom Thurmond on defense reorganization; to John Warner on risk reduction and pay and benefits for our troops; to Bill Cohen on special operations and low intensity conflict and demining our missiles; and to Dick Lugar and Pete Domenici on preventing the spread of weapons of mass destruction.

Every major improvement in defense during my time in the Senate has been the result of a few Senators and House Members of both parties putting our Nation's security before partisan politics. [Applause.]

I submit, ladies and gentlemen, that there is no serious problem facing America today that can be solved by one political party. The American people recognize that and it is time for those of us in Washington to recognize that. [Applause.]

I could go on and on, but most of the parades I have attended were as an enlisted man standing at parade rest so the time has come for self-imposed closure. [Laughter.]

Thomas Jefferson once said, "The blood of martyrs is the seed of freedom's tree." America's independence and our continued freedom have rested for 220 years on this premise. Freedom is in greater supply around the world today thanks to the United States and our allies—our allies played a big role and we should never forget that—but it comes at no small price in terms of required courage and commitment.

To the men and women in uniform and to all those who serve our Nation, I will leave the Senate keenly aware of what every American should remember. Our sense of security depends on your vigilance and your discipline. Our prosperity depends on your sacrifice. Our dreams and our children's dreams depend on your sleepless nights. And our freedom to live our lives in freedom depends on your willingness to risk yours.

May God bless each of you and all of those who serve America in the cause of freedom.

Mr. WARNER. Mr. President, I rise today to recognize the dedication, public service, and patriotism that personified the life of Capt. John William Kennedy, U.S. Air Force. Lieutenant Kennedy, or Jack as he was better known, was reported as missing in action on August 16, 1971, in South Vietnam. He was presumed killed in action on July 16, 1978, and finally confirmed as having been killed in action in May of this year.

Jack was born here in Washington, DC, but grew up in nearby Arlington, VA. He graduated from the Virginia Military Institute in 1969. While at VMI, he was the 1969 Southern Conference 160-pound wrestling champion, a member of the VMI honor court, and was inducted into the VMI sports hall of fame in 1980.

In October 1970, a year after entering the Air Force, Jack graduated from pilot training at Craig FBI in Selma,

AL, and was awarded the Undergraduate Pilot Training Office Training Award for being tops in his class. He then attended O-2A pilot training at Hurlburt Field, Eglin AFB, FL, and was thereafter assigned to the 20th Tactical Air Support Squadron [PACAF] in South Vietnam.

Unfortunately, Jack's promising young career was tragically ended while Captain Kennedy was flying on a visual reconnaissance mission over the Quangtin Province in South Vietnam. On August 16, 1971, radio contact with Jack's O-2A aircraft was lost. A search effort was initiated, but no crash site or radio contacts or witnesses were uncovered. U.S. Army intelligence reports indicated that the 31st North Vietnamese Regiment was in the area at this time.

In 1993, over 20 years later, remains were found at a crash site in Quangtin Province. The DNA from these bone fragments were positively identified as a match with Jack's mother in 1995, and Captain Kennedy's remains were returned to the United States in late June 1996. On Friday, August 2, a funeral is scheduled for Captain Kennedy in the Old Post Chapel on Fort Myer, and internment with full military honors will follow at Arlington National Cemetery.

For his remarkable, yet short career, Lieutenant Kennedy was awarded the Distinguished Flying Cross, the Purple Heart, the Air Medal with two oak leaf clusters, the National Defense Service Medal, the Vietnam Service Medal, and the Republic of Vietnam Campaign Medal.

Capt. John Kennedy was the embodiment of an American hero. A true patriot and a superb Air Force officer who served with courage and integrity, he lost his life during one of the most intense and demanding periods in our Nation's history. His mother, who lives in Lake Ridge, VA, and his brother, Dan, who many of us know from his efforts on the Hill as Bechtel's representative, should be proud of Jack and what he accomplished during his short life. I am thankful that Jack's fate has been determined, and that he has now been returned home for a proper burial.

#### TRIBUTE TO SETH J. DIAMOND

Mr. BURNS. Mr. President, Montana suffered a large loss on Friday afternoon. A plane crash in the northwest corner of our State claimed the life of three men, Seth Diamond, Ken Kohli, and Al Hall. Seth lived in Missoula, MT, and Ken and Al lived in Cour d'Alene, ID.

Over the last few years, my staff and I had the pleasure of getting to know Seth Diamond. As a representative of the timber community in the intermountain West, I had many opportunities to work with Seth. Whether we were working on changing the way our

Government deals with the Endangered Species Act or working in issues related to forest health and management, Seth was there with fresh ideas on how to solve hotly contested issues. It was Seth's sense of fairplay that gave him such a good standing with groups on both ends of the natural resource management spectrum. I valued and respected his comments and advice.

Seth Diamond was born in Philadelphia and grew up on Long Island, NY. He received an undergraduate degree from Duke and a wildlife biology masters from Virginia Polytechnic Institute and State University. In 1988, Seth found his way to Montana as a biologist for the U.S. Forest Service. He worked on the Lewis and Clark National Forest out of Choteau, MT.

The West is truly a unique area. Most believe you have to grow up in the West to appreciate our way of life and feel a strong commitment to protecting the businesses that have made Montana economically and culturally what it is today. It amazes me that a kid who grew up on the east coast could come to Montana and work to keep the wood products industry a part of Montana's economy, but most importantly believe it is vital to the well-being of Montana. Seth did just that.

Montana's resource dependent communities owe a great debt to Seth. He worked to achieve a common goal of providing jobs for families and protecting a renewable resource.

In addition to his commitment to Montana, Seth was a proud family man. He is survived by his wife, Carol, and children Kale, Laura, and Jesse Lynn. They and the rest of the Diamond family have Phyllis' and my prayers.

Montana is a richer place today because of the work and dedication of Seth Diamond. I feel fortunate to have been given an opportunity to consider him a friend.

Mr. President, I yield the floor.

#### FOREIGN OIL CONSUMED BY U.S.? HERE'S THE WEEKLY BOX SCORE

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending July 26, the United States imported 7,500,000 barrels of oil each day, the same amount imported during the same week a year ago.

Americans relied on foreign oil for 53.9 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained about 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers?



Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 7,500,000 barrels a day.

#### SALUTING THE ALABAMA NSSC DIRECTORS ASSOCIATION

Mr. HEFLIN. Mr. President, in 1981, the Alabama Association of Retired Senior Volunteer Program [RSVP] project directors developed a proposal requesting State funding for their projects as a supplement to their Federal budgets. During State budget negotiations, the funding was also extended to Alabama's Senior Companion and Foster Grandparent projects, marking the beginning of a collaboration among senior service corps programs in my State that has continued for 15 years.

As a State association known as the Alabama National Senior Service Corps Directors Association, these three programs—RSVP, Senior Companion, and Foster Grandparents—have worked together to secure other funding. The Senior Corps' 35 State projects receive more than a quarter million dollars annually from the State budget to cover costs related to volunteers. These funds have been used to establish several programs, including a public housing mentoring program and training programs in prescription and over-the-counter drug misuse. The funds have also been used to conduct free community intergenerational workshops at sites throughout the State. The association also contracts with the IRS to provide tax counseling services for the elderly.

The association is now seeking Medicaid waiver funding and hopes to soon venture into the arena of private sector funding. Project directors have taken the first step toward seeking private sector support by incorporating as a 501(c)(3) organization.

I am pleased to congratulate and commend the Alabama National Senior Service Corps Directors Association for developing an array of outstanding programs and for providing a model that illustrates the power and potential of these kinds of partnerships in providing important services to our senior citizens.

#### THE MENTALLY ILL AND THE HEALTH INSURANCE BILL

Mr. DOMENICI. Mr. President, today I was informed by the chairman of Labor, Health and Human Services, Senator NANCY KASSEBAUM, that the conferees on the health insurance bill were not going to include—with reference to the mentally ill in this country—were not going to include even the compromise which had been offered to

them that has been pending for the last 2 or 3 weeks. Frankly, the U.S. Senate voted overwhelmingly to rid this country of a terrible, terrible plight, the discrimination against the mentally ill in insurance coverage in this country. And not only the discrimination but the lack of fairness and parity of coverage.

I say publicly now to the business community of the United States, in particular the large companies, some of which are self-insured—I do not say this very often—but “Shame, shame on you. Shame on you.” It is a very simple proposition of parity that is not going to cost very much and will say to the 5 million severely mentally ill Americans and their families that they are not going to be treated any longer like second-rate, if not third-rate, citizens.

All we asked of them in our compromise Senator WELLSTONE and I submitted was that if you are going to cover mental illness, if you are going to cover mental illness, that you must include two things: One, the same lifetime cap that is total coverage, and the same annual allowable per year as you include in insurance for everyone else.

Let me repeat, that amendment did not require any kind of insurance. It did not dictate coinsurance, deductibility or anything. So companies could still tailor mental health coverage. If they are concerned about abuses, they can write the abuses out before they even offer them.

All we asked for was the simple proposition to get started recognizing the discrimination that is in our current situation. That is to say, those who are mentally ill, do not cover them with \$50,000 for life while you cover cancer patients with \$1 million, do not cover the mentally ill with a \$100,000 total lifetime if you cover those who have tuberculosis or have serious heart trouble with \$500,000 or \$1 million. Just parity, total coverage for total lifetime. On an annual basis, do not say to those who are mentally ill, you can only collect \$10,000 a year maximum where you have \$100,000 or \$50,000 for others.

I truly believe there is a total lack of willingness to understand the nature of this problem. This problem is a blight on America, a blight on our insurance companies, and a blight on the business community who continues to resist moving in the direction of parity.

I want to thank those companies in the United States that already cover the mentally ill. And there are many. And I can say they are not running around complaining about the extraordinary costs. As a matter of fact, if this amendment, the one we told them we would settle for, were adopted, the increases are almost insignificant according to the Congressional Budget Office, because there are not a lot of people who will reach those limits. It is just to make sure we do not say to them, you are second-rate citizens.

If you have insurance, your parents bought insurance, they cover somebody in their family with schizophrenia, they did not get the shock of their life that after they have spent \$100,000 they have no more for the rest of their life and look around at their neighbor who had a heart condition and they get \$1 million worth of coverage. No.

I am not sure where we are going to end up. But I can say that a counteroffer was proposed, and I regret to say it was tantamount to a whole menu of options. And if you have a menu of options, you are going to get nothing, you are going to dump the mentally ill where they are already being dumped.

So I hope that they will reconsider this decision. I, for one, am prepared to look, at this moment, at any way I can—I am not sure I can succeed—but at any way I can to make it hard to pass that bill. And any way I can find to make it impossible to pass that bill, I will do it. I am not sure on this conference I will accomplish a great deal, but we will make some noise about it because there is no need for this decision to go this way.

If those on the business side will look at the proposed amendment that was offered in lieu of the Senate-passed amendment, if they can come forth and tell me and tell those who support it how it will hurt them, how it is going to cost them, what their problems are, then I would be willing to say indeed they are trying to do something fair.

Thus far, I think it is stubbornness. I think it is totally shameful, and I, for one, have been a staunch supporter of making sure we do not put undue burdens on business. It is a joke to say they do not want any additional mandates when the whole bill is a mandate. The whole bill is a mandate. We mandate insurance companies and businesses to pay for people with preexisting conditions which is going to cost billions of dollars, and they do not talk about that. There is no excuse.

I, for one, believe we have made a reasonable case. We have been more than fair. The millions of Americans suffering from this disgraceful discrimination are willing to accept a foot in the door, a little bit, just a start, and we get the door slammed right on them.

Obviously, we have a lot of work to do, but any conferees that are unaware of the decision to give the mentally ill people of this country nothing in this conference report, maybe they ought to start with the conferees. That is what they are about to do.

Mr. WELLSTONE. I say that the Senator from New Mexico spoke with great eloquence and power, and speaks for me.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to

the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 12:30 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 640. An act to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3846. An act to amend the Foreign Assistance Act of 1961 to authorize the provision of assistance for microenterprises, and for other purposes.

H.R. 3870. An act to authorize the Agency for International Development to offer voluntary separation incentive payments to employees of that agency.

At 3:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 740. An act to confer jurisdiction on the United States Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe.

H.R. 885. An act to designate the United States Post Office building located at 153 East 110th Street, New York, New York, as the "Oscar Garcia Rivera Post Office Building."

H.R. 1734. An act to reauthorize the National Film Preservation Board, and for other purposes.

H.R. 1786. An act to regulate fishing in certain waters of Alaska.

H.R. 2391. An act to amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees.

H.R. 2700. An act to designate the building located at 8302 FM 327, Elmendorf, Texas, which houses operations of the United States Postal Service, as the "Amos F. Longoria Post Office Building".

H.R. 3118. An act to amend title 38, United States Code, to reform eligibility for health care provided by the Department of Veterans Affairs.

H.R. 3139. An act to redesignate the United States Post Office building located at 245 Centereach Mall on Middle Country Road in Centereach, New York, as the "Rose Y. Caracappa United States Post Office Building."

H.R. 3198. An act to reauthorize and amend the National Geologic Mapping Act of 1992, and for other purposes.

H.R. 3215. An act to amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians.

H.R. 3287. An act to direct the Secretary of the Interior to convey the Crawford National Fish Hatchery to the city of Crawford, Nebraska.

H.R. 3435. An act to make technical amendments to the Lobbying Disclosure Act of 1995.

H.R. 3546. An act to direct the Secretary of the Interior to convey the Waihalla National Fish Hatchery to the State of South Carolina.

H.R. 3557. An act to direct the Secretary of the Interior to convey the Marion National Fish Hatchery and the Claude Harris National Aquacultural Research Center to the State of Alabama.

H.R. 3586. An act to amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes.

H.R. 3680. An act to amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes.

H.R. 3735. An act to amend the Foreign Assistance Act of 1961 to reauthorize the Development Fund for Africa under chapter 10 of part 1 of that act.

H.R. 3768. An act to designate a United States Post Office to be located in Groton, Massachusetts, as the "Augusta 'Gusty' Hornblower United States Post Office."

H.R. 3815. An act to make technical corrections and miscellaneous amendments to trade laws.

H.R. 3834. An act to redesignate the Dunning Post Office in Chicago, Illinois, as the "Roger P. McAuliffe Post Office."

H.R. 3867. An act to amend the Developmental Disabilities Assistance and Bill of Rights Act to extend the Act, and for other purposes.

H.R. 3868. An act to extend certain programs under the Energy Policy and Conservation Act through September 30, 1996.

H.J. Res. 166. Joint resolution granting the consent of Congress to the Mutual Aid Agreement between the city of Bristol, Virginia, and the city of Bristol, Tennessee.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 142. Concurrent resolution regarding the human rights situation in Mauritania, including the continued practice of chattel slavery.

H. Con. Res. 155. Concurrent resolution concerning human and political rights and in support of a resolution of the crisis in Kosovo.

H. Con. Res. 191. Concurrent resolution to recognize and honor the Filipino World War II veterans for their defense of democratic ideals and their important contribution to the outcome of World War II.

At 5:54 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2297. An act to codify without substantive change laws related to transpor-

tation and to improve the United States Code.

At 7:34 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997.

#### MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 885. An act to designate the United States Post Office building located at 153 East 110th Street, New York, New York, as the "Oscar Garcia Rivera Post Office Building"; to the Committee on Governmental Affairs.

H.R. 1734. An act to reauthorize the National Film Preservation Board, and for other purposes; to the Committee on the Judiciary.

H.R. 1786. An act to regulate fishing in certain waters of Alaska; to the Committee on Energy and Natural Resources.

H.R. 2297. An act to codify without substantive change laws related to transportation and to improve the United States Code; to the Committee on the Judiciary.

H.R. 2700. An act to designate the building located at 8302 FM 327, Elmendorf, Texas, which houses operations of the United States Postal Service, as the "Amos F. Longoria Post Office Building"; to the Committee on Governmental Affairs.

H.R. 3118. An act to amend title 38, United States Code, to reform eligibility for health care provided by the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

H.R. 3198. An act to reauthorize and amend the National Geologic Mapping Act of 1992, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3287. An act to direct the Secretary of the Interior to convey the Crawford National Fish Hatchery to the city of Crawford, Nebraska; to the Committee on Environment and Public Works.

H.R. 3546. An act to direct the Secretary of the Interior to convey the Waihalla National Fish Hatchery to the State of South Carolina; to the Committee on Environment and Public Works.

H.R. 3557. An act to direct the Secretary of the Interior to convey the Marion National Fish Hatchery and the Claude Harris National Aquacultural Research Center to the State of Alabama; to the Committee on Environment and Public Works.

H.R. 3586. An act to amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 3768. An act to designate a United States Post Office to be located in Groton, Massachusetts, as the "Augusta 'Gusty' Hornblower United States Post Office"; to the Committee on Governmental Affairs.

H.R. 3815. An act to make technical corrections and miscellaneous amendments to trade laws; to the Committee on Finance.

H.R. 3846. An act to amend the Foreign Assistance Act of 1961 to authorize the provision of assistance for microenterprises, and



for other purposes; to the Committee on Foreign Relations.

H.R. 3867. An act to amend the Developmental Disabilities Assistance and Bill of Rights Act to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

The following concurrent resolutions were read and referred as indicated:

H. Con. Res. 142. Concurrent resolution regarding the human rights situation in Mauritania, including the continued practice of chattel slavery; to the Committee on Foreign Relations.

H. Con. Res. 155. Concurrent resolution concerning human and political rights and in support of a resolution of the crisis in Kosovo; to the Committee on Foreign Relations.

H. Con. Res. 191. Concurrent resolution to recognize and honor the Filipino World War II veterans for their defense of democratic ideals and their important contribution to the outcome of World War II; to the Committee on the Judiciary.

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 3665. An act to transfer to the Secretary of Agriculture the authority to conduct the census of agriculture; to the Committee on Governmental Affairs.

#### MEASURES PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar:

H.R. 3868. An act to extend certain programs under the Energy Policy and Conservation Act through September 30, 1996.

#### MEASURE READ THE FIRST TIME

The following measure was read the first time:

H.R. 2391. An act to amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3573. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report on the program recommendations of the Riyadh Accountability Review Board; to the Committee on Foreign Relations.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1311. A bill to establish a National Fitness and Sports Foundation to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports, and for other purposes (Rept. No. 104-340).

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1735. A bill to establish the United States Tourism Organization as a non-governmental entity for the purpose of promoting tourism in the United States (Rept. No. 104-341).

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1840. A bill to amend the Federal Trade Commission Act to authorize appropriations for the Federal Trade Commission (Rept. No. 104-342).

By Mr. HATCH, from the Committee on the Judiciary:

Report on the Activities of the Committee on the Judiciary of the U.S. Senate During the 103d Congress (Rept. No. 104-343).

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1643. A bill to amend the Older Americans Act of 1965 to authorize appropriations for fiscal years 1997 through 2001, and for other purposes (Rept. No. 104-344).

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. Con. Res. 52. A bill to recognize and encourage the convening of a National Silver Haired Congress (Rept. No. 104-345).

By Mr. MCCAIN, from the Committee on Indian Affairs, without amendment:

S. 1869. A bill to make certain technical corrections in the Indian Health Care Improvement Act, and for other purposes (Rept. No. 104-346).

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation:

Thomas Hill Moore, of Florida, to be a Commissioner of the Consumer Product Safety Commission for a term of 7 years from October 26, 1996.

(The above nominations were reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. THURMOND, from the Committee on Armed Services:

The following-named officers for promotion in the Naval Reserve of the United States to the grade indicated under title 10, United States Code, section 5912:

##### UNRESTRICTED LINE

###### To be rear admiral

Rear Adm. (1h) James Wayne Eastwood, xxx-xx-xxxx U.S. Naval Reserve.

Rear Adm. (1h) John Edwin Ker, xxx-xx-xxxx U.S. Naval Reserve.

Rear Adm. (1h) John Benjamin Totushek, xxx-xx-xxxx U.S. Naval Reserve.

##### RESTRICTED LINE

###### To be rear admiral

Rear Adm. (1h) Robert Hulburt Weidman, Jr., xxx-xx-xxxx U.S. Naval Reserve.

##### STAFF CORPS

###### To be rear admiral

Rear Adm. (1h) M. Eugene Fussell, xxx-xx-xxxx U.S. Naval Reserve.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Marine Corps while assigned to a position of importance and responsibility under the provisions of section 601(a), Title 10, United States Code:

###### To be lieutenant general

Maj. Gen. Carlton W. Fulford, Jr., xxx-xx-xxxx U.S. Marine Corps.

The following-named colonel of U.S. Marine Corps for promotion to the grade of brigadier general, under the provisions of section 624 of Title 10, United States Code:

###### To be brigadier general

Col. Arnold Fields, xxx-xx-xxxx USMC.

The following-named officer, on the active duty list, for promotion to the grade of brigadier general in the U.S. Marine Corps in accordance with section 5046 of title 10, United States Code:

Theodore G. Hess, xxx-xx-xxxx U.S. Marine Corps.

The following-named colonels of the U.S. Marine Corps for promotion to the grade of brigadier general, under the provisions of section 624 of title 10, United States Code:

###### To be brigadier general

Col. Robert R. Blackman, Jr., xxx-xx-xxxx USMC.

Col. William G. Bowdon III, xxx-xx-xxxx USMC.

Col. James T. Conway, xxx-xx-xxxx USMC.

Col. Keith T. Holcomb, xxx-xx-xxxx USMC.

Col. Harold Mashburn, Jr., xxx-xx-xxxx USMC.

Col. Gregory S. Newbold, xxx-xx-xxxx USMC.

The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

###### To be lieutenant general

Maj. Gen. John B. Sams, Jr., xxx-xx-xxxx U.S. Air Force.

The following-named officer for appointment in the Reserve of the Air Force, to the grade indicated, under title 10, United States Code, sections 8374, 12201, and 12212:

###### To be brigadier general

Col. Christopher J. Luna, xxx-xx-xxxx Air National Guard of the United States.

The following-named officer for promotion in the Regular Air Force of the United States to the grade indicated under title 10, United States Code, section 624:

###### To be brigadier general

Col. Gilbert J. Regar, xxx-xx-xxxx U.S. Air Force.

The following-named brigadier generals of the U.S. Marine Corps Reserve for promotion to the grade of major general, under the provisions of section 5898 of title 10, United States Code:

###### To be major general

Brig. Gen. John W. Hill, xxx-xx-xxxx USMCR.

Brig. Gen. Dennis M. McCarthy, xxx-xx-xxxx USMCR.

The following-named colonel of the U.S. Marine Corps for promotion to the grade of brigadier general, under the provisions of section 624 of title 10, United States Code:

###### To be brigadier general

Col. Guy M. Vanderlinden, xxx-xx-xxxx USMC.

The following-named officers for promotion in the Regular Army of the United States to the grade indicated under title 10, United States Code:

###### To be brigadier general

Col. Guy M. Vanderlinden, xxx-xx-xxxx USMC.

The following-named officers for promotion in the Regular Army of the United States to the grade indicated under title 10, United States Code:

###### To be brigadier general

Col. Guy M. Vanderlinden, xxx-xx-xxxx USMC.

The following-named officers for promotion in the Regular Army of the United States to the grade indicated under title 10, United States Code:

###### To be brigadier general

Col. Guy M. Vanderlinden, xxx-xx-xxxx USMC.

The following-named officers for promotion in the Regular Army of the United States to the grade indicated under title 10, United States Code:

###### To be brigadier general

Col. Guy M. Vanderlinden, xxx-xx-xxxx USMC.

States to the grade indicated under title 10, United States Code, sections 611(a) and 624:

*To be major general*

Brig. Gen. Michael W. Ackerman xxx-xx-xxxx  
Brig. Gen. Frank H. Akers, Jr. xxx-xx-xxxx  
Brig. Gen. Leo J. Baxter xxx-xx-xxxx  
Brig. Gen. Roy E. Beauchamp xxx-xx-xxxx  
Brig. Gen. Kenneth R. Bowra xxx-xx-xxxx  
Brig. Gen. Kevin P. Byrnes xxx-xx-xxxx  
Brig. Gen. Michael A. Canavan xxx-xx-xxxx  
Brig. Gen. Robert T. Clark xxx-xx-xxxx  
Brig. Gen. Michael L. Dodson xxx-xx-xxxx  
Brig. Gen. Robert B. Flowers xxx-xx-xxxx  
Brig. Gen. Peter C. Franklin xxx-xx-xxxx  
Brig. Gen. Thomas W. Garrett xxx-xx-xxxx  
Brig. Gen. Emmitt E. Gibson xxx-xx-xxxx  
Brig. Gen. David L. Grange xxx-xx-xxxx  
Brig. Gen. David R. Gust xxx-xx-xxxx  
Brig. Gen. Mark R. Hamilton xxx-xx-xxxx  
Brig. Gen. Patricia R.P. Hickerson xxx-xx-xxxx

xx...  
Brig. Gen. Robert R. Ivany xxx-xx-xxxx  
Brig. Gen. Joseph K. Kellogg, Jr. xxx-xx-xxxx  
Brig. Gen. John M. LeMoynes xxx-xx-xxxx  
Brig. Gen. John M. McDuffie xxx-xx-xxxx  
Brig. Gen. Freddy E. McFarren xxx-xx-xxxx  
Brig. Gen. Mario F. Montero, Jr. xxx-xx-xxxx  
Brig. Gen. Stephen T. Rippe xxx-xx-xxxx  
Brig. Gen. John J. Ryneka xxx-xx-xxxx  
Brig. Gen. Robert D. Shadley xxx-xx-xxxx  
Brig. Gen. Edwin P. Smith xxx-xx-xxxx  
Brig. Gen. John B. Sylvester xxx-xx-xxxx  
Brig. Gen. Ralph G. Wooten xxx-xx-xxxx

The following-named Army Medical Corps Competitive Category officers for appointment in the Regular Army of the United States to the grade of brigadier general under the provisions of title 10, United States Code, sections 611(a) and 624(c):

*To be brigadier general*

Col. Ralph O. Dewitt, Jr. xxx-xx-xxxx U.S. Army.  
Col. Kevin C. Kiley xxx-xx-xxxx U.S. Army.  
Col. Michael J. Kussman xxx-xx-xxxx U.S. Army.  
Col. Darrel R. Poir xxx-xx-xxxx U.S. Army.

The following-named Army Medical Corps Competitive Category officer for appointment in the Regular Army of the United States to the grade of brigadier general under the provisions of title 10, United States Code, sections 611(a) and 624(c):

*To be brigadier general*

Col. Mack C. Hill xxx-xx-xxxx U.S. Army.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

*To be lieutenant general*

Maj. Gen. David L. Bendor xxx-xx-xxxx  
The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Maj. Gen. Frank B. Campbell xxx-xx-xxxx U.S. Air Force.

The following-named officer for reappointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Lt. Gen. Lester L. Lyles xxx-xx-xxxx

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Maj. Gen. Patrick K. Gamble xxx-xx-xxxx

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Maj. Gen. Roger G. DeKok xxx-xx-xxxx

The following-named officer for reappointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Lt. Gen. Charles T. Robertson xxx-xx-xxxx U.S. Air Force.

The following-named officers for appointment in the Reserve of the Air Force, to the grade indicated, under the provisions of title 10, United States Code, sections 8373, 8374, 12201, and 12212:

*To be major general*

Brig. Gen. Keith D. Bjerke xxx-xx-xxxx Air National Guard.  
Brig. Gen. Edmond W. Boenisch, Jr. xxx-xx-xxxx Air National Guard.  
Brig. Gen. Stewart R. Byrne xxx-xx-xxxx Air National Guard.  
Brig. Gen. John H. Fenimore xxx-xx-xxxx Air National Guard.  
Brig. Gen. Johnny J. Hobbs xxx-xx-xxxx Air National Guard.  
Brig. Gen. Stephen G. Kearney xxx-xx-xxxx Air National Guard.  
Brig. Gen. William B. Lynch xxx-xx-xxxx Air National Guard.

*To be brigadier general*

Col. Brian E. Barents xxx-xx-xxxx Air National Guard.  
Col. George P. Christakos xxx-xx-xxxx Air National Guard.  
Col. Walter C. Corish, Jr. xxx-xx-xxxx Air National Guard.  
Col. Fred E. Ellis xxx-xx-xxxx Air National Guard.  
Col. Frederick D. Feinstein xxx-xx-xxxx Air National Guard.  
Col. William P. Gralow xxx-xx-xxxx Air National Guard.  
Col. Douglas E. Henneman xxx-xx-xxxx Air National Guard.  
Col. Edward R. Jayne II xxx-xx-xxxx Air National Guard.  
Col. Raymond T. Klosowski xxx-xx-xxxx Air National Guard.  
Col. Fred N. Larson xxx-xx-xxxx Air National Guard.  
Col. Bruce W. MacLan xxx-xx-xxxx Air National Guard.  
Col. Ronald W. Mielke xxx-xx-xxxx Air National Guard.  
Col. Frank A. Mitolo xxx-xx-xxxx  
Col. Frank D. Rezak xxx-xx-xxxx  
Col. John P. Silliman, Jr. xxx-xx-xxxx  
Col. George E. Wilson III xxx-xx-xxxx

The following-named officer for reappointment to the grade of admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10, United States Code, sections 601 and 5033:

CHIEF OF NAVAL OPERATIONS

*To be admiral*

Adm. Jay L. Johnson xxx-xx-xxxx

The following-named officer for appointment to the grade of general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be general*

Lt. Gen. Howell M. Estes III xxx-xx-xxxx

The following U.S. Army National Guard officer for promotion in the Reserve of the Army to the grade indicated under title 10, United States Code, sections 3385, 3392 and 12203(a):

*To be major general*

Brig. Gen. Gerald A. Rudisill, Jr. xxx-xx-xxxx

The following-named officer for promotion in the Regular Air Force of the United States to the grade indicated under title 10, United States Code, section 624:

*To be brigadier general*

Col. Garry R. Trexler xxx-xx-xxxx

\*Everett Alvarez, Jr., of Maryland, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring May 1, 1999.

\*Alberto Aleman Zubieta, a citizen of the Republic of Panama, to be Administrator of the Panama Canal Commission

The following named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

*To be lieutenant general*

Maj. Gen. Eric K. Shinsiek xxx-xx-xxxx  
The following-named officer for appointment to the grade of vice admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be vice admiral*

Rear Adm. (Selectee) Lyle G. Bien xxx-xx-xxxx

xx...  
(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND. Mr. President, for the Committee on Armed Services, I report favorably the attached listing of nominations. Those identified with a double asterisk (\*\*) are to lie on the Secretary's desk for the information of any Senator, since these names have already appeared in the RECORDS of May 17, 1996, June 3, 18, and July 9, 11, 1996, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of May 17, 1996, June 3, 18, and July 9, 11, 1996, at the end of the Senate proceedings.)

\*\*In the Air Force there are 31 promotions to the grade of lieutenant colonel (list begins with Gregory O. Allen) (Reference No. 1132).

\*\*In the Navy there are 170 promotions to the grade of captain (list begins with William S. Adsit) (Reference No. 1133).

\*\*In the Navy there are 304 promotions to the grade of captain (list begins with Johnny P. Albus) (Reference No. 1134).

\*\*In the Air Force there are 2,525 promotions to the grade of lieutenant colonel and below (list begins with Derrick K. Anderson) (Reference No. 1135).

In the Navy there are 317 promotions to the grade of captain (list begins with Michael P. Agor)

\*\*In the Army there is 1 promotion to the grade of lieutenant colonel (Wayne E. Anderson) (Reference No. 1165).

\*\*In the Air Force there are 13 promotions to the grade of colonel and below (list begins



with Stephen D. Chiabotti) (Reference No. 1188).

\*\*In the Marine Corps there are 2 promotions to the grade of lieutenant colonel and below (list begins with Richard L. West) (Reference No. 1189).

\*\*In the Navy there are 10 appointments to the grade of ensign (list begins with Anthony L. Evangelista) (Reference No. 1190).

\*\*In the Marine Corps there is 1 posthumous appointment to the grade of lieutenant colonel (John J. Canney) (Reference No. 1195).

\*\*In the Army there are 200 promotions to the grade of lieutenant colonel (list begins with Ann L. Bagley) (Reference No. 1196).

\*\*In the Army there are 423 promotions to the grade of major (list begins with James W. Baik) (Reference No. 1197).

Total: 3,742.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WYDEN (for himself, Ms. SNOWE, and Mrs. BOXER):

S. 2004. A bill to modify certain provisions of the Health Care Quality Improvement Act of 1986; to the Committee on Labor and Human Resources.

By Mr. WYDEN:

S. 2005. A bill to prohibit the restriction of certain types of medical communications between a health care provider and a patient; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. THURMOND, and Mr. GRASSLEY):

S. 2006. A bill to clarify the intent of Congress with respect to the Federal carjacking prohibition; read the first time.

By Mr. BIDEN (for himself, Mr. HATCH, Mr. LEAHY, Mr. KOHL, Mr. GRASSLEY, Mrs. BOXER, Ms. MIKULSKI, and Ms. MOSELEY-BRAUN):

S. 2007. A bill to clarify the intent of Congress with respect to the Federal carjacking prohibition; read the first time.

By Mr. DASCHLE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Mr. WELLSTONE, Ms. MIKULSKI, Mr. BYRD, Mr. DODD, Mr. CONRAD, Mr. INOUE, Mr. PELL, Mr. SIMON, Mr. FEINGOLD, Mr. BREAUX, Mrs. BOXER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. ROBB, and Mr. KENNEDY):

S. 2008. A bill to amend title 38, United States Code, to provide benefits for certain children of Vietnam veterans who are born with spina bifida, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. ASHCROFT:

S.J. Res. 58. A joint resolution proposing an amendment to the Constitution of the United States relative to granting power to the States to propose constitutional amendments; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself, Ms. SNOWE, and Mrs. BOXER):

S. 2004. A bill to modify certain provisions of the Health Care Quality Improvement Act of 1986; to the Committee on Labor and Human Resources.

By Mr. WYDEN:

S. 2005. A bill to prohibit the restriction of certain types of medical communications between a health care provider and a patient; to the Committee on Labor and Human Resources.

### THE PATIENT COMMUNICATIONS PROTECTION ACT OF 1996

Mr. WYDEN. Mr. President, I rise today to introduce two new bills which I believe will help more fully inform patients and consumers about the health care choices they face, and safeguard the most critical relationship between care giver and patient.

The first bill, which I introduce with my colleagues Senator SNOWE and Senator BOXER, is the Health Care Quality Improvements Act of 1996. It amends and improves the 1986 public law which created the national practitioner databank, an informational resource maintained by the Department of Health and Human Services which is a compendium of State disciplinary actions and civil malpractice case judgments against caregivers. As of this year, some 86,000 caregivers are listed in this taxpayer-supported databank. Currently, this informational resource is accessible only by hospitals, insurance plans, and State boards of medicine and health care licensing. The legislation introduced by Senator SNOWE and me, today, would for the first time allow public access to critically important databank records. Caregivers who have had at least three reportable incidents in their files would have their entire databank records opened to the public. This legislation also would create an Internet site on the World Wide Web allowing easier access for publicly accessible information.

The second bill, the Patient Communications Protection Act of 1996, would make illegal provisions in some contracts between caregivers and health plans which restrict communications between caregivers and their patients. Too often, I believe, these contract provisions limit the free and necessary communications of information to patients regarding their medical condition and all possible modalities of treatment. This legislation, while upholding the right of plans to work with physicians to improve the overall quality of care within a health plan, clearly restricts plans from impeding the free flow of medical information between State-licensed caregivers and patient.

The Health Care Quality Improvements Act is endorsed by a number of groups including Families USA, Consumer Action, the National Association of Health Data Organizations, and the United Seniors Health Cooperative.

The Patient Communications Protection Act is supported by the Oregon Medical Association, the American Association of Retired Persons, the Center for Patient Advocacy, Citizen Action, the Consumers Union, and the American College of Emergency Physicians.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2004

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Care Quality Improvement Act Amendments of 1996".

### SEC. 2. STANDARDS FOR PROFESSIONAL REVIEW ACTIONS.

Section 412(a) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11112(a)) is amended in the matter after and below paragraph (4) by adding at the end the following sentence: "A motion for summary judgment that such standards have been met shall be granted unless, considering the evidence in the light most favorable to the opposing party, a reasonable finder of fact could conclude that the presumption has been so rebutted. The decision on such a motion may be appealed as of right, without regard to whether the motion is granted or denied, and the courts of appeals (other than the United States Court of Appeals for the Federal Circuit) have jurisdiction of appeals from such decisions of the district courts."

### SEC. 3. REQUIREMENTS FOR MEDICAL MALPRACTICE DATA.

(a) IN GENERAL.—Section 421 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131) is amended—

(1) by striking subsections (a) and (b);

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting before subsection (d) (as so redesignated) the following subsections:

"(a) IN GENERAL.—

"(1) REQUIREMENT OF REPORTING.—Subject to the subsequent provisions of this subsection, each person or entity which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances thereof.

"(2) PAYMENTS BY PRACTITIONERS.—The persons to whom the requirement of paragraph (1) applies include a physician or other licensee healthcare practitioner who makes a payment described in such paragraph and whose acts or omissions are the basis of the action or claim involved. The preceding sentence is subject to paragraph (3).

"(3) REFUND OF FEES.—With respect to a physician or other licensed health care practitioner whose acts or omissions are the basis of an action or claim described in paragraph (1), the requirement of such paragraph shall not apply to a payment described in such paragraph if—

"(A) the payment is made by the physician or practitioner as a refund of fees for the health services involved, and

"(B) the payment does not exceed the amount of the original charge for the health services.

"(4) DEFINITION OF ENTITY AND PERSON.—For purposes of this section, the term 'entity' includes the Federal Government, any State or local government, and any insurance company or other private entity; and the term 'person' includes Federal officers and employees.

"(b) INFORMATION TO BE REPORTED.—The information to be reported under subsection

(a) by a person or entity regarding a payment and an action or claim includes the following:

"(1)(A) The name of each physician or other licensed health care practitioner whose acts or omissions were the basis of the action or claim; and (to the extent authorized under title II of the Social Security Act) the social security account number assigned to the physician or practitioner.

"(B) The medical field of the physician or practitioner, including as applicable the medical specialty.

"(C) The date on which the physician or practitioner was first licensed in the medical field involved, and the number of years the physician or practitioner has been practicing in such field.

"(D) If the physician or practitioner could not be identified for purposes of subparagraph (A)—

"(1) a statement of such fact and an explanation of the inability to make the identification, and

"(2) the name of the hospital or other health services organization (as defined in section 431) for whose benefit the payment was made.

"(3) The amount of the payment.

"(4) The name (if known) of any hospital or other health services organization with which the physician or practitioner is affiliated or associated.

"(5) A statement that describes the acts or omissions and injuries or illnesses upon which the action or claim was based, that specifies whether an action was filed, and if an action was filed, that specifies whether the action was a class action.

"(6) A statement by the physician or practitioner regarding the action or claim, if the physician or practitioner elects to make such a statement.

"(7) If the payment was made without the consent of the physician or practitioner, a statement specifying such fact and the reasons underlying the decision to make the payment without such consent.

"(8) Such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

"(c) CERTAIN REPORTING CRITERIA; NOTICE TO PRACTITIONERS.—

"(1) REPORTING CRITERIA.—The establishing criteria under section 424(a) for reports under this section, the Secretary shall establish criteria regarding statements under subsection (b)(4). Such criteria shall include—

"(A) criteria regarding the length of each of the statements,

"(B) criteria regarding the notice required by paragraph (2) of this subsection, and

"(C) such other criteria as the Secretary determines to be appropriate.

"(2) NOTICE OF OPPORTUNITY TO MAKE STATEMENT.—In the case of an entity that prepares a report under subsection (a)(1) regarding a payment and an action or claim, the entity shall notify any physician or practitioner identified under subsection (b)(1)(A) of the opportunity to make a statement under subsection (b)(4)(B). Criteria under paragraph (1)(B) of this subsection shall include criteria regarding the date by which the reporting entity is to provide the notice and the date by which the physician or practitioner is to submit the statement to the entity."

(b) DEFINITION OF HEALTH SERVICES ORGANIZATION.—Section 431 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11151) is amended—

(1) by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively; and

(2) by inserting after paragraph (4) the following paragraph:

"(5) The term 'health services organization' means an entity that, directly or through contracts, provides health services. Such term includes hospitals; health maintenance organizations and other health plans; and health care entities (as defined in paragraph (4))."

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.) is amended—

(A) in section 411(a)(1), in the matter preceding subparagraph (A), by striking "431(9)" and inserting "431(10)";

(B) in section 421(d) (as redesignated by subsection (a)(2) of this section), by inserting "person or" before "entity";

(C) in section 422(a)(2)(A), by inserting before the comma at the end the following: ", and (to the extent authorized under title II of the Social Security Act) the social security account number assigned to the physician"; and

(D) in section 423(a)(3)(A), by inserting before the comma at the end the following: ", and (to the extent authorized under title II of the Social Security Act) the social security account number assigned to the physician or practitioner".

(2) APPLICABILITY OF REQUIREMENTS TO FEDERAL ENTITIES.—

(A) Section 432 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11152) is amended—

(i) by striking subsection (b); and

(ii) by redesignating subsection (c) as subsection (b).

(B) Section 432 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11153) is amended by adding at the end the following subsection:

"(e) APPLICABILITY TO FEDERAL FACILITIES AND PHYSICIANS.—

"(1) IN GENERAL.—Subsection (a) applies to Federal health facilities (including hospitals) and actions by such facilities regarding the competence or professional conduct of Federal physicians to the same extent and in the same manner as such subsection applies to health care entities and professional review actions.

"(2) RELEVANT BOARD OF MEDICAL EXAMINERS.—For purposes of paragraph (1), the Board of Medical Examiners to which a Federal health facility is to report is the Board of Medical Examiners of the State within which the facility is located."

(C) Section 425 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11135) is amended by adding at the end the following subsection:

"(d) APPLICABILITY TO FEDERAL HOSPITALS.—This section applies to Federal hospitals to the same extent and in the same manner as such subsection applies to other hospitals."

SEC. 4. REPORTING OF SANCTIONS TAKEN BY BOARDS OF MEDICAL EXAMINERS.

Section 422(a) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11132(a)) is amended—

(1) in paragraph (1)(A), by striking "which revokes or suspends" and inserting "which denies, revokes, or suspends"; and

(2) in paragraph (2)—

(A) in subparagraph (B), by striking "(if known)" and all that follows and inserting "for the action described in paragraph (1)(A) that was taken with respect to the physician or, if known, for the surrender of the license";

(B) by redesignating subparagraph (C) as subparagraph (E); and

(C) by inserting after subparagraph (B) the following subparagraphs:

"(C) the medical field of the physician, if known, including as applicable the medical specialty,

"(D) the date on which the physician was first licensed in the medical field, and the number of years the physician has been practicing in such field, if known, and".

SEC. 5. REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES.

Section 423(a)(3) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11133(a)(3)) is amended—

(1) in subparagraph (B), by striking "and" after "surrender,";

(2) by redesignating subparagraph (C) a subparagraph (E); and

(3) by inserting after subparagraph (B) the following subparagraphs:

"(C) the medical field of the physician, if known, including as applicable the medical specialty,

"(D) the date on which the physician was first licensed in the medical field, and the number of years the physician has been practicing in such field, if known, and".

SEC. 6. FORM OF REPORTING.

Section 424 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11134) is amended by adding at the end the following subsection:

"(d) ADDITIONAL REQUIREMENTS.—Not later than 30 days after the effective date for this subsection under section 11 of the Health Care Quality Improvement Act Amendments of 1996, the information reported under sections 421, 422(a), and 423(b) shall be available (to persons and entities authorized in this Act to receive the information) in accordance with the following:

"(1) The methods of organizing the information shall include organizing by medical field (and as applicable by medical specialty).

"(2) With respect to medical malpractice actions reported under section 421(b)(4)(A), the methods of organizing shall specify whether the action was a class action."

SEC. 7. DUTY TO OBTAIN INFORMATION.

Part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) is amended by inserting after section 425 the following section:

"SEC. 425A. DUTY OF BOARDS OF MEDICAL EXAMINERS TO OBTAIN INFORMATION.

"(a) IN GENERAL.—Effective 2 years after the date of the enactment of the Health Care Quality Improvement Act Amendments of 1996, it is the duty of each Board of Medical Examiners to request from the Secretary (or the agency designated under section 424(b)) information reported under this part concerning a physician—

"(1) at the time the physician submits the initial application for a physician's license in the State involved, and

"(2) at each time the physician submits an application to continue in effect the license, subject to subsection (d).

A Board of Medical Examiners may request information reported under this part concerning a physician at other times.

"(b) FAILURE TO OBTAIN INFORMATION.—With respect to an action for mandamus or other cause of action against a Board of Medical Examiners, a Board which does not request information respecting a physician as required under subsection (a) is presumed to have knowledge of any information reported under this part to the Secretary with respect to the physician.

"(c) RELIANCE ON INFORMATION PROVIDED.—With respect to a cause of action against a



Board of Medical Examiners, each Board of Medical Examiners may rely upon information provided to the Board under this title, unless the Board has knowledge that the information provided was false.

**"(d) STATE OPTION REGARDING CONTINUATION OF LICENSES.—**

**"(1) ESTABLISHMENT OF ELECTRONIC SYSTEM FOR TRANSMISSION OF DATA.—**After consultation with the States, the Secretary shall establish a system for electronically transmitting information under this part to States that elect to install equipment necessary for participation in the system. The system shall possess the capability to receive transmissions of data from such States.

**"(2) STATE OPTION REGARDING ELECTRONIC SYSTEM.—**With respect to compliance with subsection (a)(2) (relating to applications to continue in effect physicians' licenses), if a State is participating in the system under paragraph (1) and provides the Board of Medical Examiners of the State with access to the system, the Board may elect, in lieu of complying with subsection (a)(2), to comply with paragraph (3) of this subsection.

**"(3) DESCRIPTION OF OPTION.—**For purposes of paragraph (2), a Board of Medical Examiners is complying with this paragraph if—

**"(A)** through the system under paragraph (1), the Board annually transmits to the Secretary (or the agency designated under section 424(b)) data identifying all individuals who hold a valid physician's license issued by the Board, without regard to whether the licenses are expiring, and

**"(B)** after receiving from the Secretary (or such agency) a list of physicians under paragraph (4)(B), the Board complies with paragraph (5).

**"(4) IDENTIFICATION BY SECRETARY OF RELEVANT PHYSICIANS.—**After receiving data under paragraph (3)(A) from a Board of Medical Examiners, the Secretary (or the agency designated under section 424(b)) shall—

**"(A)** from among the physicians identified through the data, determine which of such physicians has been the subject of information reported under this part, and the State in which the incidents involved occurred, and

**"(B)** provide to the Board, through the system under paragraph (1), a list of the physicians who have been such subjects, which list specifies for each physician the States in which the incidents involved occurred.

**"(5) REQUEST BY STATE OF INFORMATION ON RELEVANT PHYSICIANS.—**For purposes of paragraph

**(3)(B),** a Board of Medical Examiners of a State is complying with this paragraph if, after receiving the list of physicians under paragraph (4)(B), the Board promptly—

**(A)** identifies which of the physicians has had, for purposes of paragraph (4), an incident in another State, and

**(B)** requests for the Secretary (or the agency) information reported under this part concerning each of the physicians so identified."

**SEC. 8. ADDITIONAL PROVISIONS REGARDING ACCESS TO INFORMATION; MISCELLANEOUS PROVISIONS.**

**(a) ACCESS TO INFORMATION.—**Section 427(a) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137(a)) is amended to read as follows:

**"(a) ACCESS REGARDING LICENSING, EMPLOYMENT, AND CLINICAL PRIVILEGES.—**The Secretary (or the agency designated under section 424(b)) shall, upon request, provide information reported under this part concerning a physician or other licensed health care practitioner to—

**"(1)** State licensing boards, and  
**"(2)** hospitals and other health services organizations—

**"(A)** that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner, or

**"(B)** to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff."

**(b) FEES.—**Section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137(b)(4)) is amended to read as follows:

**"(4) FEES.—**In disclosing information under subsection (a) or section 426, the Secretary may impose fees in amounts reasonably related to the costs of carrying out the duties of the Secretary regarding the information reported under this part (including the functions specified in section 424(b) with respect to the information), except that a fee may not be imposed for providing a list under section 425A(d)(4)(B) to any Board of Medical Examiners. Such fees are available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 424(b)) to cover such costs. Such fees remain available until expended."

**(c) ADDITIONAL DISCLOSURES OF INFORMATION.—**Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended by adding at the end the following subsection:

**"(e) AVAILABILITY OF INFORMATION TO PUBLIC.—**

**"(1) IN GENERAL.—**Not later than 30 days after the effective date for this subsection under section 11 of the Health Care Quality Improvement Act Amendments of 1996, and every 3 months thereafter, the Secretary shall, except as provided in paragraph (2), make available to the public all information reported under sections 421, 422(a), and 423(b). For such purpose, the information shall be published as a separate document whose principal topic is such information, and in addition the information shall be made available through the method described in paragraph (3).

**"(2) LIMITATIONS.—**In the case of a physician or other licensed health care practitioner with respect to whom one or more incidents have been reported under sections 421, 422(a), and 423(b), the following applies:

**"(A)** Information may not be made available under paragraph (1) if, subject to subparagraph (B), the aggregate number of discrete incidents reported under such sections is not more than 2.

**"(B)** A discrete incident reported under section 421 may not be counted under subparagraph (A) if the payment for the medical malpractice action or claim involved was less than \$25,000.

**"(C)** If the number of discrete incidents counted under subparagraph (A) is 3 or more, the resulting availability of information under paragraph (1) with respect to such practitioner shall include information reported on all the discrete incidents that were so counted. Such availability may not include information on any incident not counted by reason of subparagraph (B).

**"(D)** Of the information reported under section 421, the following information may not be made available under paragraph (1) (regardless of the number of discrete incidents counted under subparagraph (A) and regardless of the amount of the payments involved):

**"(i)** The social security account number of the physician or practitioner.

**"(ii)** Information disclosing the identity of any patient involved in the incidents involved.

**"(iii)** With respect to information that the Secretary requires under section 421(b)(5) (if any)—

**"(I)** the home address of the physician or practitioner, and

**"(II)** the number assigned to the physician or practitioner by the Drug Enforcement Administration.

**"(iv)** Information not required to be reported under such section.

**"(3) USE OF INTERNET.—**For purposes of paragraph (1), the method described in this paragraph is to make the information involved available to the public through the telecommunications medium known as the World Wide Web of the Internet. The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall provide for the establishment of a site on such medium, and shall update the information maintained through such medium not less frequently than once every 3 months.

**"(4) DISSEMINATION; FEES.—**The Secretary shall disseminate each publication under paragraph (1) to public libraries without charge. In providing the publication to other entities, and in making information available under paragraph (3), the Secretary may impose a fee reasonably related to the costs of the Secretary in carrying out this subsection. Such fees are available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 424(b)) to cover such costs. Such fees remain available until expended."

**(d) CONFORMING AMENDMENTS.—**Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

**(1)** in subsection (b)(1), in the first sentence, by striking "Information reported" and inserting the following: "Except for information disclosed under subsection (e), information reported"; and

**(2)** in the heading for the section, by striking "MISCELLANEOUS PROVISIONS" and inserting the following: "ADDITIONAL PROVISIONS REGARDING ACCESS TO INFORMATION; MISCELLANEOUS PROVISIONS".

**SEC. 9. OTHER MATTERS.**

The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.) is amended—

**(1)** by redesignating part C as part D; and  
**(2)** by inserting after part B the following part:

**"PART C—OTHER MATTERS REGARDING IMPROVEMENT OF HEALTH CARE QUALITY**

**"SEC. 428. PROHIBITION AGAINST SETTLEMENT WITHOUT CONSENT OF PRACTITIONER.**

**"(a) PROHIBITION.—**With respect to a physician or other licensed health care practitioner whose acts or omissions are the basis of a medical malpractice action or claim, an entity may not make a payment described in section 421(a)(1) without the written consent of the physician or practitioner, subject to subsection (b).

**"(b) EXCEPTIONS.—**Subsection (a) shall not apply with respect to a payment by an entity regarding an action or claim, subject to subsection (c)—

**"(1)** if the payment is made in satisfaction of a judgment in a court of competent jurisdiction,

**"(2)** if, with respect to the action or claim, the physician or other licensed health care practitioner involved enters a process of alternative dispute resolution, and the process has been concluded or any of the individuals involved has terminated participation in the process,

**"(3)(A)** the entity delivers directly, or makes a reasonable effort to deliver through

the mail, a written notice to the physician or practitioner involved providing the information specified in subsection (c), and

"(B) a 30-day period elapses, at the conclusion of which the entity has a reasonable belief that the physician or practitioner does not object to the payment.

"(c) CRITERIA REGARDING NOTICE.—For purposes of subsection (b)(3) regarding a written notice to a physician or practitioner—

"(1) the notice shall be considered to have been delivered if the notice was delivered to the home or business address of the physician or practitioner, and to the attorney (if any) representing the physician or practitioner in the action or claim involved,

"(2) the notice shall be considered to have been delivered directly if the notice was delivered personally by the entity involved or by an agent of the entity,

"(3) the entity shall be considered to have made a reasonable effort to deliver the notice through the mail if the entity provided the notice through certified mail, with return receipt requested,

"(4) the information specified in this paragraph for the notice is that the entity intends to make the payment involved; that the physician or practitioner has a legal right to prohibit the payment; and that such right expires in 30 days, with a specification of the date on which the right expires, and

"(5) the 30-day period begins on the date on which the notice is delivered directly to the physician or practitioner, or on the seventh day after the date on which the notice is posted, as the case may be.

"(d) CIVIL MONEY PENALTY.—An entity that makes a payment in violation of subsection (a) shall be subject to a civil money penalty of not more than \$10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

#### "SEC. 429. EMPLOYMENT TERMINATION OF PHYSICIAN.

"(a) REQUIREMENT OF ADEQUATE NOTICE AND HEARING.—

"(1) IN GENERAL.—A health services organization may not terminate the employment of a physician, and may not terminate a contract with a physician for the provision of health services, unless adequate notice and hearing procedures have been afforded the physician involved.

"(2) APPLICABILITY.—Section 412(a)(3) applies in lieu of paragraph (1) in the case of an employment termination that is a professional review action. (With respect to the preceding sentence, paragraph (1) does apply to an employment termination that is an action described in subparagraph (A) of section 431(10) or in the other subparagraphs of such section.)

"(b) SAFE HARBOR.—

"(1) IN GENERAL.—A health services organization is deemed to have met the adequate notice and hearing requirement of subsection (a) with respect to the employment of, or a contract of, a physician if the conditions described in paragraphs (2) through (4) are met (or are waived voluntarily by the physician).

"(2) NOTICE OF PROPOSED ACTION.—Conditions under paragraph (1) are that the physician involved has been given notice stating—

"(A)(i) that the health services organization proposes to take action to terminate the employment or contract,

"(ii) reasons for the proposed action,

"(B)(i) that the physician has the right to request a hearing on the proposed action,

"(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

"(C) a summary of the rights in the hearing under paragraph (4).

"(3) NOTICE OF HEARING.—Conditions under paragraph (1) are that, if a hearing is requested on a timely basis under paragraph (2)(B), the physician involved must be given notice stating—

"(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

"(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the health services organization.

"(4) CONDUCT OF HEARING AND NOTICE.—Conditions under paragraph (1) are that, if a hearing is requested on a timely basis under paragraph (2)(B)—

"(A) subject to subparagraph (B), the hearing shall be held (as determined by the health services organization)—

"(i) before arbitrator mutually acceptable to the physician involved and the health services organization,

"(ii) before a hearing officer who is appointed by the organization and who is not in direct economic competition with the physician, or

"(iii) before a panel of individuals who are appointed by the organization and are not in direct economic competition with the physician,

"(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear,

"(C) in the hearing the physician has the right—

"(i) to representation by an attorney or other person of the physician's choice,

"(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

"(iii) to call, examine, and cross-examine witnesses,

"(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

"(v) to submit a written statement at the close of the hearing, and

"(D) upon completion of the hearing, the physician has the right—

"(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

"(ii) to receive a written decision of the health services organization, including a statement of the basis for the decision.

"(c) RULE OF CONSTRUCTION.—A health services organization's failure to meet the conditions described in paragraphs (2) through (4) of subsection (b) shall not, in itself, constitute failure to meet the standards of subsection (a)."

#### SEC. 10. DEFINITIONS.

Section 431(6) of the Health Care Quality Improvement Act of 1986, as redesignated by section 3(b)(1) of this Act, is amended by inserting before the period the following: "(except that such term means an institution described in such paragraph (1) (without regard to such paragraph (7)) if, under applicable State or local law, the institution is permitted to operate without being licensed or otherwise approved as a hospital)".

#### SEC. 11. EFFECTIVE DATES.

(a) INCORPORATION OF TEXT OF AMENDMENTS.—The amendments described in this Act are made upon the date of the enactment of this Act.

(b) SUBSTANTIVE EFFECT.—Except as provided in subsection (c)(1) and subsection (d), and except as otherwise provided in this Act—

(1) the amendments made by this Act take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act; and

(2) prior to the expiration of such period, the Health Care Quality Improvement Act of 1986, as in effect on the day before such date of enactment, continues in effect.

#### (c) REGULATIONS.—

(1) IN GENERAL.—With respect to the amendments made by this Act, the Secretary of Health and Human Services may issue regulations pursuant to such amendments before the expiration of the period specified in subsection (b)(1), and may otherwise take appropriate action before the expiration of such period to prepare for the responsibilities of the Secretary to the amendments.

(2) ABSENCE OF FINAL RULE.—The final rule for purposes of paragraph (1) may not take effect before the expiration of the period specified in subsection (b)(1), and the absence of such a rule upon such expiration does not affect the provisions of subsection (b).

(d) TRANSITIONAL PROVISIONS REGARDING MALPRACTICE PAYMENTS BY PERSONS.—With respect to the reporting of information under section 421 of the Health Care Quality Improvement Act of 1986, the following applies:

(1) The requirement of reporting by persons under section 421(a)(1) of such Act (as amended by section 3(a) of this Act) takes effect 180 days after the date of the enactment of this Act.

(2) The requirement of reporting by persons applies to payments under such section 421(a)(1) made before, on, or after such date of enactment.

(3)(A) The information received by the Secretary of Health and Human Services on or before August 27, 1993, pursuant to regulations requiring reports from persons (in addition to reports from entities) shall be maintained in the same manner as the information was maintained prior to such date, and shall be available in accordance with the regulations in effect under such Act prior to such date (which regulations remain in effect unless a provision of this Act takes effect pursuant to this section and requires otherwise).

(B) Subparagraph (A) takes effect on the date of the enactment of this Act.

S. 2005

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Patient Communications Protection Act of 1996".

(b) FINDINGS.—Congress finds the following:

(1) Patients need access to all relevant information to make appropriate decisions, with their physicians, about their health care.

(2) Restrictions on the ability of physicians to provide full disclosure of all relevant information to patients making health care decisions violate the principles of informed consent and practitioner ethical standards.

(3) The offering and operation of health plans affect commerce among the States. Health care providers located in one State serve patients who reside in other States as well as that State. In order to provide for uniform treatment of health care providers and patients among the States, it is necessary to cover health plans operating in one



State as well as those operating among the several States.

## SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

### (a) IN GENERAL.—

(1) PROHIBITION OF CERTAIN PROVISIONS.—Subject to paragraph (2), an entity offering a health plan (as defined in subsection (d)(2)) may not include any provision that prohibits or restricts any medical communication (as defined in subsection (b)) as part of—

(A) a written contract or agreement with a health care provider,

(B) a written statement to such a provider, or

(C) an oral communication to such a provider.

(2) CONSTRUCTION.—Nothing in this section shall be construed as preventing an entity from exercising mutually agreed upon terms and conditions not inconsistent with paragraph (1), including terms or conditions requiring caregivers to participate in, and cooperate with, all programs, policies, and procedure developed or operated by the person, corporation, partnership, association, or other organization to ensure, review, or improve the quality of health care.

(3) NULLIFICATION.—Any provision described in paragraph (1) is null and void.

(b) MEDICAL COMMUNICATION DEFINED.—In this section, the term "medical communication" means a communication made by a health care provider with a patient of the provider (or the guardian or legal representative of such patient) with respect to the patient's physician or mental condition or treatment options.

(c) ENFORCEMENT THROUGH IMPOSITION OF CIVIL MONEY PENALTY.—

(1) IN GENERAL.—Any entity that violates paragraph (1) of subsection (a) shall be subject to a civil money penalty of up to \$15,000 for each violation. No such penalty shall be imposed solely on the basis of an oral communication unless the communication is part of a pattern or practice of such communications and the violation is demonstrated by a preponderance of the evidence.

(2) PROCEDURES.—The provisions of subsections (c) through (1) of section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) shall apply to civil money penalties under paragraph (1) in the same manner as they apply to a penalty or proceeding under section 1128A(a) to a penalty or proceeding under section 1128A(a) of such Act.

(d) DEFINITIONS.—For purposes of this section:

(1) HEALTH CARE PROVIDER.—The term "health care provider" means anyone licensed under State law to provide health care services, including a practitioner such as a nurse anesthetist or chiropractor who is so licensed.

(2) HEALTH PLAN.—The term "health plan" means any public or private health plan or arrangement (including an employee welfare benefit plan) which provides, or pays the cost of, health benefits, and includes an organization of health care providers that furnishes health services under a contract or agreement with such a plan.

(3) COVERAGE OF THIRD PARTY ADMINISTRATORS.—In the case of a health plan that is an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974), any third party administrator or other person with responsibility for contracts with health care providers under the plan shall be considered, for purposes of this section, to be an entity offering such health plan.

(e) NON-PREEMPTION OF STATE LAW.—A State may establish or enforce requirements with respect to the subject matter of this section, but only if such requirements are consistent with the Act and are more protective of medical communications than the requirements established under this section.

(g) EFFECTIVE DATE.—Subsection (a) shall take effect 180 days after the date of the enactment of this Act and shall apply to medical communications made on or after such date.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. THURMOND, and Mr. GRASSLEY):

S. 2006. A bill to clarify the intent of Congress with respect to the Federal carjacking prohibition.

### THE CARJACKING CORRECTION ACT OF 1996

Mr. HATCH. Mr. President, I rise to introduce the Carjacking Correction Act of 1996. This bill adds an important clarification to the Federal carjacking statute, which is to provide that a rape committed during a carjacking should be considered a serious bodily injury.

I am pleased to be joined in this effort by the ranking member of the Judiciary Committee, Senator BIDEN. He has long been a leader in addressing the threat of violence against women, and our partnership in enacting the Violence Against Women Act is evidence of strong bipartisan outrage at every incident of assault or domestic violence.

This correction to the law is necessitated by the fact that at least one court has held that under the Federal carjacking statute, rape would not constitute a serious bodily injury. Few crimes are as brutal, vicious, and harmful to the victim than rape. Yet, under this interpretation, the sentencing enhancement for such injury may not be applied to a carjacker who brutally rapes his victim.

In my view, Congress should act now to clarify the law in this regard. The bill we introduce today would do this by specifically including rape as serious bodily injury under the statute.

I want to thank Representative JOHN CONYERS, the ranking member of the House Judiciary Committee, who brought this matter to my attention and is leading the effort in the House for passage of this legislation.

I urge my colleagues to support swift passage of this bill.

By Mr. DASCHLE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Mr. WELLSTONE, Ms. MIKULSKI, Mr. BYRD, Mr. DODD, Mr. CONRAD, Mr. INOUE, Mr. PELL, Mr. SIMON, Mr. FEINGOLD, Mr. BREAUX, Mrs. BOXER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. ROBB, and Mr. KENNEDY):

S. 2008. A bill to amend title 38, United States Code, to provide benefits for certain children of Vietnam veterans who are born with spina bifida, and for other purposes; to the Committee on Veterans Affairs.

### THE AGENT ORANGE BENEFITS ACT OF 1996

Mr. DASCHLE. Mr. President, today, with 19 of my colleagues, I am introducing the Agent Orange Benefits Act of 1996. This legislation is an important step toward easing the burden of innocent, indirect victims of our country's use of agent orange during the Vietnam war. The bill would extend health care and related benefits, including a monthly monetary allowance, to Vietnam veterans' children suffering from spina bifida—a serious neural tube birth defect that requires lifelong care.

This bill is a necessary followup to the Agent Orange Act of 1991, which I coauthored with Senators KERRY and Cranston and Representative LANE EVANS and which unanimously passed the Senate. Among other things, the Agent Orange Act required the Department of Veterans Affairs [VA] to contract with the Institute of Medicine [IOM], which is part of the National Academy of Sciences [NAS], to conduct a scientific review of all evidence pertaining to exposure to agent orange and other herbicides used in Vietnam and the subsequent occurrence of disease and other health-related conditions. The law required an initial report, which was issued by NAS in 1993, followed by biennial updates for 10 years. The first update was published by NAS last March.

In accordance with the law, Vietnam veterans are not required to prove exposure to agent orange; the law presumes that all military personnel who served in Vietnam were exposed to agent orange. The Secretary is to provide presumptive disability compensation for diseases suffered by Vietnam veterans whenever he determines, based on all credible evidence, including the congressionally mandated NAS reports, that a positive association exists between exposure and the occurrence of such diseases in humans. For purposes of this law, a positive association must be found to exist whenever credible evidence for an association is equal to or outweighs the credible evidence against the association.

We have been struggling for decades to provide compensation and health care for Vietnam veterans—and, if warranted, their children—for health problems associated with exposure to agent orange. Since 1985, Vietnam veterans have been eligible for free VA health care for conditions believed to be related to exposure to agent orange. Vietnam veterans are also eligible for presumptive disability compensation for several diseases, including chloracne and various cancers, associated with exposure to agent orange or other herbicides used in Vietnam. Most recently, in response to the March NAS report, the Secretary of Veterans Affairs awarded service-connected disability compensation for prostate cancer and acute and subacute peripheral neuropathy.

An area of key concern to Vietnam veterans has been what they believe to be a high rate of birth defects in the children born to them since their service in Vietnam. The Agent Orange Act of 1991 specifically mandated that the area of reproductive disorders and birth defects be given special attention to determine whether or not compensatory action is warranted. The March NAS report showed new evidence suggesting a link between exposure to agent orange and the occurrence of spina bifida in Vietnam veterans' children. The report also noted that there is growing evidence, though not as strong as the evidence on spina bifida at this point, suggestive of an increase in other birth defects among Vietnam veterans' children.

In response to the NAS report, the Secretary of Veterans Affairs assembled an interdepartmental task force, which consulted with interested veterans' service organizations and experts in spina bifida, to review the NAS findings and make policy recommendations to the Secretary.

In May, the Secretary delivered to the President several policy recommendations based on the VA's review of the NAS report. These included recommendations to add prostate cancer and acute and subacute peripheral neuropathy to the list of presumptive diseases, and, if authority were granted, to treat spina bifida in veterans' children in the same manner. The VA does not currently have the authority to provide benefits to veterans' children. Subsequently, President Clinton announced that the administration would propose legislation to provide an appropriate remedy for Vietnam veterans' children who suffer from spina bifida. This bill reflects that effort.

Clearly, the Government's responsibility does not end once veterans return from war. Effects of combat, even those passed down through reproductive disorders, are a direct result of our decisions to place our Nation's men and women in harm's way. We have a moral responsibility to help veterans whose children suffer from spina bifida and to meet those children's health care needs.

It should be noted that spina bifida is a devastating, irreversible birth defect resulting from the failure of the spine to properly close early in pregnancy. It requires lifelong medical treatment, and the cost of caring for a child with spina bifida can be financially devastating for families. While spina bifida affects approximately one of every 1,000 newborns in the United States, a study of Vietnam veterans that was included in the NAS report showed three spina bifida cases in a group of only 792 infants of Vietnam veterans—a statistically significant result.

The Agent Orange Benefits Act of 1996 would provide health care, limited

vocational rehabilitation, and a monthly stipend to Vietnam veterans' children with spina bifida based on the severity of each child's condition. It includes the provision of essential medical care and case management services to coordinate health and social services for the child.

Unfortunately, the NAS report confirmed what Vietnam veterans have long feared: the Vietnam war continues to claim innocent victims. Nothing can erase the physical and psychological wounds of the war, but, by providing limited benefits to affected children, the Agent Orange Benefits Act of 1996 will allow us to heal some of the lingering scars from Vietnam.

The NAS report also serves as a valuable reminder that the impact of any war is felt decades beyond the final shots. Just as reproductive disorders and birth defects in their children have been among Vietnam veterans' greatest health concerns, health problems in their children is of great concern to veterans who served in the Gulf war. We must be prepared to learn from the scientific effort on agent orange and apply these lessons to the effort to discover the true health effects of environmental hazards on the men and women who served in the Gulf and on their children. Based on the NAS report's findings related to spina bifida in the children of Vietnam veterans, the VA is establishing a reproductive outcomes research center to investigate potential environmental hazards of military service. I look forward to seeing those efforts come to fruition, and I am hopeful they will help us provide answers to the many outstanding questions in this area.

I applaud the President and Secretary Jesse Brown, along with my colleagues who have been committed to this fight for years, for working together to develop a proposal that adequately addresses the needs of these children and their families, and for providing modest compensation for a wrong that can never fully be righted.

With the passage of this legislation, we can begin to fulfill our promise to these most innocent victims and their families. Vietnam veterans' families have suffered for decades and now live with the pain of knowing that their military service may have jeopardized the health and welfare of their children. The very least we can do is ease their burden by providing this limited assistance and care.

Mr. President, I ask unanimous consent that the text of the bill, a summary of the bill, a letter of support from the administration, and a table from the NAS report that explains the four-tiered classification system for agent orange-related illnesses, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2008

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# SECTION 1. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

## SEC. 2. BENEFITS FOR THE CHILDREN OF VIETNAM VETERANS WHO ARE BORN WITH SPINA BIFIDA.

(a) **SHORT TITLE.**—This section may be cited as the "Agent Orange Benefits Act of 1996."

(b) **ESTABLISHMENT OF NEW CHAPTER 18.**—Part II is amended by inserting after chapter 17 the following new chapter:

### "CHAPTER 18—BENEFITS FOR THE CHILDREN OF VIETNAM VETERANS WHO ARE BORN WITH SPINA BIFIDA

"Sec.

"1801. Purpose.

"1802. Definitions.

"1803. Health care.

"1804. Vocational training.

"1805. Monetary allowance.

"1806. Effective date of Awards.

#### SEC. 1801. PURPOSE.

"The purpose of this chapter is to provide for the special needs of certain children of Vietnam veterans who were born with the birth defect spina bifida, possibly as the result of the exposure of one or both parents to herbicides during active service in the Republic of Vietnam during the Vietnam era, through the provision of health care, vocational training, and monetary benefits.

#### "SEC. 1802. DEFINITIONS.

"For the purposes of this chapter—

"(1) The term 'child' means a natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era.

"(2) The term 'Vietnam veteran' means a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era.

"(3) The term 'spina bifida' means all forms of spina bifida other than spina bifida occulta.

#### "SEC. 1803. HEALTH CARE.

"(a) In accordance with regulations the Secretary shall prescribe, the Secretary shall provide such health care under this chapter as the Secretary determines is needed to a child of a Vietnam veteran who is suffering from spina bifida, for any disability associated with such condition.

"(b) The Secretary may provide health care under this section directly or by contract or other arrangement with a health care provider.

"(c) For the purposes of this section—

"(1) the term 'health care' means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care, and includes the training of appropriate members of a child's family or household in the care of the child and provision of such pharmaceuticals, supplies, equipment, devices, appliances, assistive technology, direct transportation costs to and from approved sources of health care authorized under this section, and other materials as the Secretary determines to be necessary.



"(2) the term 'health care provider' includes, but is not limited to, specialized spina bifida clinics, health-care plans, insurers, organizations, institutions, or any other entity or individual who furnishes health care services that the Secretary determines are covered under this section.

"(3) the term 'home care' means outpatient care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

"(4) the term 'hospital care' means care and treatment for a disability furnished to an individual who has been admitted to a hospital as a patient.

"(5) the term 'nursing home care' means care and treatment for a disability furnished to an individual who has been admitted to a nursing home as a resident.

"(6) the term 'outpatient care' means care and treatment of a disability, and preventive health services, furnished to an individual other than hospital care or nursing home care.

"(7) the term 'preventive care' means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines are necessary to provide effective and economical preventive health care.

"(8) the term 'habilitative and rehabilitative care' means such professional, counseling, and guidance services and treatment programs (other than vocational training under section 1804 of this title) as are necessary to develop, maintain, or restore, to the maximum extent, the functioning of a disabled person.

"(9) the term 'respite care' means care furnished on an intermittent basis in a Department facility for a limited period to an individual who resides primarily in a private residence when such care will help the individual to continue residing in such private residence.

#### "SEC. 1804. VOCATIONAL TRAINING.

"(a) Pursuant to such regulations as the Secretary may prescribe, the Secretary may provide vocational training under this section to a child of a Vietnam veteran who is suffering from spina bifida if the Secretary determines that the achievement of a vocational goal by such child is reasonably feasible.

"(b)(1) If a child elects to pursue a program of vocational training under this section, the program shall be designed in consultation with the child in order to meet the child's individual needs and shall be set forth in an individualized written plan of vocational rehabilitation.

"(2)(A) Subject to subparagraph (B) of this paragraph, a vocational training program under this subsection shall consist of such vocationally oriented services and assistance, including such placement and post-placement services and personal and work adjustment training, as the Secretary determines are necessary to enable the child to prepare for and participate in vocational training or employment.

"(B) A vocational training program under this subsection—

"(i) may not exceed 24 months unless, based on a determination by the Secretary that an extension is necessary in order for the child to achieve a vocational goal identified (before the end of the first 24 months of such program) in the written plan formulated for the child, the Secretary grants an

extension for a period not to exceed 24 months;

"(ii) may not include the provision of any loan or subsistence allowance or any automobile adaptive equipment; and

"(iii) may include a program of education at an institution of higher learning only in a case in which the Secretary determines that the program involved is predominantly vocational in content.

"(c)(1) A child who is pursuing a program of vocational training under this section who is also eligible for assistance under a program under chapter 35 of this title may not receive assistance under both of such programs concurrently but shall elect (in such form and manner as the Secretary may prescribe) under which program to receive assistance.

"(2) The aggregate period for which a child may receive assistance under this section and chapter 35 of this title may not exceed 48 months (or the part-time equivalent thereof).

#### "SEC. 1805. MONETARY ALLOWANCE.

"(a) The Secretary shall pay a monthly allowance under this chapter to any child of a Vietnam veteran for disability resulting from spina bifida suffered by such child.

"(b) The amount of the allowance paid under this section shall be based on the degree of disability suffered by a child as determined in accordance with such schedule for rating disabilities resulting from spina bifida as the Secretary may prescribe. The Secretary shall, in prescribing the rating schedule for the purposes of this section, establish three levels of disability upon which the amount of the allowance provided by this section shall be based. The allowance shall be \$200 per month for the lowest level of disability prescribed, \$700 per month for the intermediate level of disability prescribed, and \$1,200 per month for the highest level of disability prescribed.

"(c)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each rate of allowance under this section, as such rates were in effect immediately prior to the date of such increase in benefits payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

"(2) Whenever there is an increase in the rates of the allowance payable under this section, the Secretary shall publish such rates in the Federal Register.

"(3) Whenever such rates are so increased, the Secretary may round such rates in such manner as the Secretary considers equitable and appropriate for ease of administration.

"(d) Notwithstanding any other provision of law, receipt by a child of an allowance under this section shall not impair, infringe, or otherwise affect the right of such child to receive any other benefit to which the child may otherwise be entitled under any law administered by the Secretary, nor shall such receipt impair, infringe, or otherwise affect the right of any individual to receive any benefit to which he or she is entitled under any law administered by the Secretary that is based on the child's relationship to such individual.

"(e) Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

#### "SEC. 1806. EFFECTIVE DATE OF AWARDS.

"Effective date for an award for benefits under this chapter shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor."

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1996.

(d) CLERICAL AMENDMENT.—The tables of chapters before part I and at the beginning of part II are each amended by inserting after the item referring to chapter 17 the following new item:

"18. Benefits for children of Vietnam veterans who are born with spina bifida ..... 1801".

#### SEC. 3. CLARIFICATION OF ENTITLEMENT FOR BENEFITS FOR DISABILITY RESULTING FROM TREATMENT OR VOCATIONAL SERVICES PROVIDED BY DEPARTMENT OF VETERANS AFFAIRS.

(a) Section 1151 is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following:

"(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for qualifying additional disability to or death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, additional disability or death is qualifying only if it was not the result of the veteran's willful misconduct and—

"(1) it was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by the Secretary, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, where the additional disability or death proximately resulted—

"(A) from carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination; or

"(B) from an event not reasonably foreseeable; or

"(2) it was incurred as a proximate result of the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title."; and

(2) in the second sentence—

(A) by redesignating that sentence as subsection (b);

(B) by striking out "aggravation," both places it appears; and

(C) by striking out "sentence" and substituting in lieu thereof "subsection".

(b) The amendments made by subsection (a) shall govern all administrative and judicial determinations of eligibility for benefits under section 1151 of title 38, United States Code, made with respect to claims filed on or after the date of enactment of this Act, including those based on original applications and applications seeking to reopen, revise, reconsider, or otherwise readjudicate on any basis claims for benefits under section 1151 of that title or predecessor provisions of law.

#### AGENT ORANGE BENEFITS FOR VIETNAM VETERANS' CHILDREN SUFFERING FROM SPINA BIFIDA

The Agent Orange Act of 1996 would extend health care and related benefits, including a monthly monetary allowance, to Vietnam veterans' children suffering from spina bifida—a serious neural tube birth defect

that requires life-long care—provided the children were conceived after the veterans began their service in Vietnam.

#### BACKGROUND

A March National Academy of Sciences (NAS) report cited new evidence that supports a link between exposure to Agent Orange and the occurrence of spina bifida in children of veterans who served in Vietnam. This report was required by the Agent Orange Act of 1991.

Since 1985, Vietnam veterans have been eligible for free VA health care for conditions believed to be related to exposure to Agent Orange. Veterans' disability compensation for several Agent Orange-related illnesses—including non-Hodgkin's lymphoma, soft-tissue sarcoma, Hodgkin's disease, chloracne, respiratory cancers, and multiple myeloma—has been awarded as a result of either congressional or VA action, some of which was based on a 1993 NAS report. Earlier this year, Secretary Brown and the President, in response to the March NAS report, extended service-connected benefits to veterans suffering from prostate cancer and acute and sub-acute peripheral neuropathy.

Reproductive disorders and birth defects in their children have been among veterans' greatest Agent Orange-related health concerns. This legislation is necessary because, while the VA has recommended that spina bifida in veterans' offspring be service-connected, the VA does not currently have the authority to extend health care or other benefits to children of veterans.

#### COST

CBO has not yet provided an estimate for this proposal. However, costs would be offset by overturning the *Gardner* case, which would limit the VA's liability for non-malpractice-related injuries occurring in VA facilities. This non-controversial provision was included in Democratic and Republican budget proposals for FY 96. Excess savings would be directed to deficit reduction.

#### ROLE OF THE NATIONAL ACADEMY OF SCIENCES

The Agent Orange Act of 1991 directed the VA to contract with the National Academy of Sciences to conduct for 10 years biennial, comprehensive evaluations of the scientific and medical information regarding the health effects of exposure to Agent Orange and other herbicides used in Vietnam.

The first report, "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam," was published in 1993. It created the following categories to classify the level of association between certain health conditions and exposure to Agent Orange: Category I ("sufficient evidence of an association"); category II ("limited/suggestive evidence of an association"); category III ("inadequate/insufficient evidence to determine whether an association exists"); category IV ("limited/suggestive evidence of NO association").

Following the 1993 report, the VA began to compensate Vietnam veterans suffering from three diseases in categories I and II that had not been service-connected through previous congressional or administrative action: porphyria cutanea tarda, respiratory cancers, and multiple myeloma.

The 1996 update, which was issued in March, confirmed many of the findings in the 1993 report, and found new evidence to link spina bifida in veterans' children with exposure to Agent Orange. The NAS panel placed "spina bifida in offspring" in category II, supporting a connection between birth defects and military service. The NAS report currently places birth defects other than spina bifida in category III.

After reviewing the NAS report and other information, the VA has recommended that all remaining conditions in categories I and II, including spina bifida, be service-connected.

#### THE SECRETARY OF VETERANS AFFAIRS,

Washington, DC, July 5, 1996.

HON. CHRISTOPHER S. (KIT) BOND,

Chairman, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to share with you a copy of legislation we provided earlier today to Senator Daschle. This legislation, the "Agent Orange Benefits Act of 1996," would provide benefits to certain children of Vietnam veterans who are born with the birth defect spina bifida. Enacting this legislation is a Presidential priority.

Under Public Law 102-4, and with the benefit of a National Academy of Sciences report, I determined that a positive association exists between the exposure of Vietnam veterans to herbicides (such as Agent Orange) and spina bifida in their children. In approving this determination, the President promised to submit "an appropriate remedy" for these veterans' children. This legislation fulfills that commitment. It provides for health care, vocational training, and monthly monetary allowance for these children.

As set forth in the legislation, the Administration proposes to offset the costs associated with these new benefits with a savings proposal that would effectively reverse the U.S. Supreme Court decision in *Gardner v. Brown* which held that monthly VA disability compensation must be paid for any additional disability or death attributable to VA medical treatment even if VA was not negligent in providing that care.

Enactment of this legislation is a top Presidential priority. I strongly urge the Senate to include it in the earliest appropriate legislative vehicle.

Thank you for your assistance in ensuring prompt and immediate action on this important legislation.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this letter.

Sincerely,

JESSE BROWN.

#### EXECUTIVE SUMMARY

TABLE 1-1—UPDATED SUMMARY OF FINDINGS IN OCCUPATIONAL, ENVIRONMENTAL, AND VETERANS STUDIES REGARDING THE ASSOCIATION BETWEEN SPECIFIC HEALTH PROBLEMS AND EXPOSURE TO HERBICIDES

##### Sufficient evidence of an association

Evidence is sufficient to conclude that there is a positive association. That is, a positive association has been observed between herbicides and the outcome in studies in which chance, bias, and confounding could be ruled out with reasonable confidence. For example, if several small studies that are free from bias and confounding show an association that is consistent in magnitude and direction, there may be sufficient evidence for an association. There is sufficient evidence of an association between exposure to herbicides and the following health outcomes: Soft-tissue sarcoma; Non-Hodgkin's lymphoma; Hodgkin's disease; Chloracne.

##### Limited/suggestive evidence of an association

Evidence is suggestive of an association between herbicides and the outcome but is limited because chance, bias, and confounding could not be ruled out with confidence. For

example, at least one high-quality study shows a positive association, but the results of other studies are inconsistent. There is limited/suggestive evidence of an association between exposure to herbicides and the following health outcomes: Respiratory cancers (lung, larynx, trachea); Prostate cancer; Multiple myeloma; Acute and subacute peripheral neuropathy (new disease category); Spina bifida (new disease category); Porphyria cutanea tarda (category change in 1996).

##### Inadequate/insufficient evidence to determine whether an association exists

The available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association. For example, studies fail to control for confounding, have inadequate exposure assessment, or fail to address latency. There is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and the following health outcomes: Hepatobiliary cancers; Nasal/nasopharyngeal cancer; Bone cancer; Female reproductive cancers (cervical, uterine, ovarian); Breast cancer; Renal cancer; Testicular cancer; Leukemia; spontaneous abortion; Birth defects (other than spina bifida); Neonatal/infant death and stillbirths; Low birthweight; Childhood cancer in offspring; Abnormal sperm parameters and infertility; cognitive and neuropsychiatric disorders; Motor/co-ordination dysfunction; Chronic peripheral nervous system disorders; Metabolic and digestive disorders (diabetes, changes in liver enzymes, lipid abnormalities, ulcers); Immune system disorders (immune suppression and autoimmunity); Circulatory disorders; Respiratory disorders; Skin cancer (category change in 1996).

##### Limited/suggestive evidence of no association

Several adequate studies, covering the full range of levels of exposure that human beings are known to encounter, are mutually consistent in not showing a positive association between exposure to herbicides and the outcome at any level of exposure. A conclusion of "no association" is inevitably limited to the conditions, level of exposure, and length of observation covered by the available studies. In addition, the possibility of a very small elevation in risk at the levels of exposure studied can never be excluded. There is limited/suggestive evidence of no association between exposure to herbicides and the following health outcomes: Gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, rectal cancer); Bladder cancer; Brain tumors.

Note: "Herbicides" refers to the major herbicides used in Vietnam: 2,4-D (2,4-dichlorophenoxyacetic acid); 2,4,5-T (2,4,5-trichlorophenoxyacetic acid) and its contaminant TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin); cacodylic acid; and picloram. The evidence regarding association is drawn from occupational and other studies in which subjects were exposed to a variety of herbicides and herbicide components.

Mr. BYRD. Mr. President, I am proud to cosponsor the legislation introduced by the able Democratic leader, Senator DASCHLE, which provides health care and assistance to the children of Vietnam veterans who suffer from spina bifida. This legislation provides the needed authority for the Department of Veterans Affairs to treat these children for their service-connected disabilities arising from their father's exposure to



agent orange during the Vietnam conflict. This is an unprecedented but appropriate action, since scientific research is now sufficiently sophisticated to allow us to understand the effects of toxic exposures on ourselves and on future generations.

As a result of the Agent Orange Act of 1991, the Department of Veterans Affairs and the National Academy of Sciences have at regular intervals reviewed the ongoing research on Agent Orange exposure. The report update issued this spring found "limited/suggestive evidence" linking the birth defect spina bifida to agent orange exposure. The report notes that all three epidemiologic studies reviewed suggest an association between herbicide exposure and increased risk of spina bifida in offspring. It further notes that in contrast to most other diseases, for which the strongest data have been from occupationally exposed workers, these studies focused on Vietnam veterans. All the studies were judged to be of relatively high quality, although they did suffer from some methodologic limitations.

On the basis of this finding, Secretary Jesse Brown recommended that a service connection be granted to Vietnam veterans' children with spina bifida. It is the right decision, and I applaud him for it. The research and the legislation are long overdue for families that have been struggling for some twenty years. Some one has observed that "procrastination is the thief of time." These children and their families have already lost time, lost long years of doubt and wondering, of financial hardship that they bore alone because the government procrastinated in investigating and acknowledging its role in this tragedy. The legislation introduced today by Senator DASCHLE attempts to correct that injustice, and I commend him for it. The poet Edward Young (1683-1796) has said: "Be wise today; 'tis madness to defer." Support this legislation, take responsibility for the tragic aftermath of our involvement in Vietnam, and take care of these children.

Mr. KERRY. Mr. President, I am pleased to join my distinguished colleague from South Dakota, Senator DASCHLE, in cosponsoring the Agent Orange Benefits Act of 1996. This bill takes another crucial step forward in repaying our debt to those who have served their country and are still suffering as a result of their service in Vietnam many years ago. In May, President Clinton announced that legislation would be proposed to aid Vietnam veterans' children who suffer from the disease spina bifida. This bill fulfills that commitment by recognizing and accepting natural responsibility for one of the serious health care needs of veterans' families that stem from the tragic effects of agent orange.

Senator DASCHLE and I and many others have worked for the past decade

to try to bring to a fair and just resolution the questions surrounding agent orange and the effects it has had on the men and women who faithfully served this country. I know that there is still controversy about the effects of agent orange. There may always be controversy, just as there may always be controversy about the Vietnam war itself. But we must set aside the controversy—or put it behind us—to enable suffering children to receive the care and treatment they need when that suffering can be followed back to a service person's exposure to agent orange.

After years of hard work, I believe we have reached an acceptable consensus on the effects of agent orange through numerous studies—and independent scientific reviews of the many studies—which have been made on the effects of this dangerous chemical that contains deadly dioxin. I might add that it has been 30 years since agent orange was sprayed in Vietnam and we must stop debating over the bias of each individual analyzing the information. As I said back in May of 1988, "It is offensive to veterans to tell them that there is not enough 'scientific evidence' to justify compensation." \* \* \* The evidence is in their own bodies, and even worse, in the bodies of their children."

We have made great strides in reaching a consensus in some areas of health care for Vietnam veterans. Since 1985, Vietnam veterans have been eligible for free health care from the Veterans Administration for conditions that are related to exposure to agent orange. Veterans' disability compensation has been awarded to veterans affected by several agent orange-related illnesses including non-Hodgkins lymphoma, soft tissue sarcoma, Hodgkin's disease, chloracne, respiratory cancers, multiple myeloma, and, most recently, prostate cancer and acute and subacute peripheral neuropathy.

Today, Mr. President, we are addressing a particularly heinous effect of agent orange—an effect that unfortunately will carry the legacy of the Vietnam war to yet another generation. The bill we are introducing today would extend health care and related benefits to children of Vietnam veterans who suffer from spina bifida, a serious neural tube birth defect that requires life-long care—provided, of course, the children were conceived after the veterans began their service in Vietnam.

The National Academy of Sciences released a report in March of this year, citing new evidence supporting the link between exposure to agent orange and the occurrence of spina bifida in children of veterans who served in Vietnam. This report, Mr. President, warrants our action.

Both the President and the Secretary of Veterans Affairs, Jesse Brown, have asked that spina bifida in veterans' off-

spring be considered service connected. However, the VA currently does not have the authority to extend the health care and other related benefits to these children that they so greatly need. This bill will grant the VA the necessary authority to finally start providing needed care to these children who are suffering.

Mr. President, these are children whose misery stems from physical damage caused to one of their parents who was fighting for this country in Vietnam. We should do no less than provide them with the care and treatment they need. We must not make some of the children of our Vietnam veterans the last victims of the Vietnam war. I urge my colleagues to support this bill.

By Mr. ASHCROFT:

S.J. Res. 58. A joint resolution proposing an amendment to the Constitution of the United States relative to granting power to the States to propose constitutional amendments; to the Committee on the Judiciary.

STATE-INITIATED CONSTITUTIONAL AMENDMENT  
JOINT RESOLUTION

Mr. ASHCROFT. Mr. President, I rise this afternoon to talk about first principles, about fundamental truths, about a battle that helped give birth to a nation. The amendment I have sent to the desk represents an effort to restore the federal system conceived by the Framers over two centuries ago by giving the States the capacity to initiate constitutional reforms.

In considering my remarks earlier this morning, I was reminded of a trip my family and I made several years ago when I was Governor of the State of Missouri. In 1989, we were extended an opportunity to visit the site where the Continental Army, led by Gen. Atermas Ward, fought to seize Bunker Hill on the Charlestown peninsula.

It was a moving experience. One cannot help but recall the monument, dedicated by Daniel Webster, that stands as a tribute to the lives that were lost. I recommend the trip to both Members and the viewing audience alike.

I must confess, however, that the expansive field you will find fails to fully capture the raw carnage that visited Bunker Hill in June of 1775. Close to 2,000 lives were lost in less than 2 hours. And, while General Howe's regulars were masters of the peninsula at the end of the day, the casualties they sustained were more than twice that of the American militia.

Historians, Mr. President, have come to record Bunker Hill as a bloody if indecisive contest, an early salvo in a conflict which Dr. Jonathan Rossie has characterized as a "glorious cause." Glorious, if warfare can be called that, because the issue that animated the colonists that day was freedom, for themselves and generations yet to

come; God, courage, and posterity were their invisible allies.

And as I reflect on those events, I cannot help but wonder what has become of the first principles for which our forefathers fought? What has become of the fundamental truths that compelled those great patriots up that hill, bayonets flashing, voices shouting "push on, push on."

For that battle outside of Boston helped give birth to a nation, a constitutional republic that was the first of its kind. A system where, as Madison suggested in "Federalist" No. 46, "the federal and state governments are in fact but different agents of the people, constituted with different powers, and designed for different purposes."

Unfortunately, Mr. President, Madison's vision is being lost. Judicial activism, Federal intervention, and past constitutional reforms have led to a gradual erosion of State power. In particular, the passage of the 16th and 17th amendments have had a disastrous effect on the capacity of the States to check Federal expansion. The former, establishing the income tax, gave the central government a virtually unlimited spending power, while the latter, providing for the direct election of Senators, worked to undermine the Senate's contemplated role as the protector of State autonomy.

One of the single, greatest challenges we face as a country and as a Congress, is addressing the constitutional imbalance that has arisen from the convergence of these trends. Allowing the States to initiate amendments on issues ranging from a balanced budget to congressional term limits would do just that.

The operation of the proposed amendment is as simple as its intent is clear. Whenever two-thirds of the States propose an amendment, in identical terms, it is submitted to the Congress for review. If two-thirds of both Houses fail to disapprove the amendment during the session in which it is received, the proposal is then forwarded to the States for ratification by three-fourths of the legislatures thereof.

If adopted, the proposed amendment would have tremendous value on several different fronts. First, it would force the cold corridors of power on the Potomac to respond to the will of the people—no more mandates, no more deficits, no more careerism in the Congress. Similarly, the amendment would allow the States to once again share the constitutional agenda of the Nation. And finally, it would provide a potential for addressing the problems of federalism in a context which could conceivably augment State power.

In Gregory versus Ashcroft, Justice O'Connor opined that "in the tension between Federal and State power lies the promise of liberty." And so it does. I believe reconstituting the federal system of which Madison wrote must be-

come conservatives' new glorious cause. This amendment is a measured, moderate step toward achieving that end. For these reasons, Mr. President, I beg its adoption.

#### ADDITIONAL COSPONSORS

S. 334

At the request of Mr. MCCONNELL, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 334, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

S. 729

At the request of Mr. BAUCUS, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 729, a bill to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund, and for other purposes.

S. 1744

At the request of Mr. INOUE, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1744, a bill to permit duty free treatment for certain structures, parts, and components used in the Gemini Telescope Project.

S. 1838

At the request of Mr. FAIRCLOTH, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1838, a bill to require the Secretary of the Treasury to mint and issue coins in commemoration of the centennial anniversary of the first manned flight of Orville and Wilbur Wright in Kitty Hawk, North Carolina, on December 17, 1903.

S. 1873

At the request of Mr. INHOFE, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1873, a bill to amend the National Environmental Education Act to extend the programs under the Act, and for other purposes.

S. 1885

At the request of Mr. INHOFE, the names of the Senator from Tennessee [Mr. FRIST] and the Senator from Hawaii [Mr. INOUE] were added as cosponsors of S. 1885, a bill to limit the liability of certain nonprofit organizations that are providers of prosthetic devices, and for other purposes.

S. 1938

At the request of Mr. BOND, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1938, a bill to enact the model Good Samaritan Act Food Donation Act, and for other purposes.

S. 1951

At the request of Mr. FORD, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 1951, a bill to ensure the competitiveness of the United States textile and apparel industry.

S. 1963

At the request of Mr. ROCKEFELLER, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 1963, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 1987

At the request of Mr. FAIRCLOTH, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 1987, a bill to amend titles II and XVIII of the Social Security Act to prohibit the use of social security and medicare trust funds for certain expenditures relating to union representatives at the Social Security Administration and the Department of Health and Human Services.

#### SENATE JOINT RESOLUTION 57

At the request of Mr. ASHCROFT, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of Senate Joint Resolution 57, a joint resolution requiring the Congressional Budget Office and the Joint Committee on Taxation to use dynamic economic modeling in addition to static economic modeling in the preparation of budgetary estimates of proposed changes in Federal revenue law.

#### SENATE CONCURRENT RESOLUTION 64

At the request of Mr. INOUE, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Concurrent Resolution 64, a concurrent resolution to recognize and honor the Filipino World War II veterans for their defense of democratic ideals and their important contribution to the outcome of World War II.

#### AMENDMENTS SUBMITTED

#### THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

#### BAUCUS (AND OTHERS) AMENDMENT NO. 5141

Mr. BAUCUS (for himself, Mr. BINGAMAN, Mr. GRASSLEY, and Mr. REID) proposed an amendment to the bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes; as follows:

At the appropriate place in title III, insert the following:



### SEC. 3 . CALCULATION OF FEDERAL-AID HIGHWAY APPORTIONMENTS AND ALLOCATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), for fiscal year 1997, the Secretary of Transportation shall determine the Federal-aid highway apportionments and allocations to a State without regard to the approximately \$1,596,000,000 credit to the Highway Trust Fund (other than the Mass Transit Account) of estimated taxes paid by States that was made by the Secretary of the Treasury for fiscal year 1995 in correction of an accounting error made in fiscal year 1994.

(b) ADJUSTMENTS FOR EFFECTS IN 1996.—The Secretary of Transportation shall, for each State—

(1) determine whether the State would have been apportioned and allocated an increased or decreased amount for Federal-aid highways for fiscal year 1996 if the accounting error referred to in subsection (a) had not been made (which determination shall take into account the effects of section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1921)); and

(2) after apportionments and allocations are determined in accordance with subsection (a)—

(A) adjust the amount apportioned and allocated to the State for Federal-aid highways for fiscal year 1997 by the amount of the increase or decrease; and

(B) adjust accordingly the obligation limitation for Federal-aid highways distributed to the State under this Act.

(c) NO EFFECT ON 1996 DISTRIBUTIONS.—Nothing in this section shall affect any apportionment, allocation, or distribution of obligation limitation, or reduction thereof, to a State for Federal-aid highways for fiscal year 1996.

(d) EFFECTIVE DATE.—This section shall take effect on September 30, 1996.

### WELLSTONE AMENDMENT NO. 5142

Mr. LAUTENBERG (for Mr. WELLSTONE) proposed an amendment to the bill, H.R. 3675, supra; as follows:

At the appropriate place in title IV, insert the following:

### SEC. 4 . TRANSFER OF FUNDS AMONG MINNESOTA HIGHWAY PROJECTS.

(a) IN GENERAL.—Such portions of the amounts appropriated for the Minnesota highway projects described in subsection (b) that have not been obligated as of December 31, 1996, may, at the option of the Minnesota Department of Transportation, be made available to carry out the 34th Street Corridor Project in Moorhead, Minnesota, authorized by section 149(a)(5)(A)(iii) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 181) (as amended by section 340(a) of the National Highway System Designation Act of 1995 (Public Law 104-59; 109 Stat. 607)).

(b) PROJECTS.—The Minnesota highway projects described in this subsection are—

(1) the project for Saint Louis County authorized by section 149(a)(76) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 192); and

(2) the project for Nicollet County authorized by item 159 of section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2056).

### WYDEN (AND OTHERS) AMENDMENT NO. 5143

Mr. LAUTENBERG (for Mr. WYDEN, for himself, Mr. KERRY, and Ms. MOSELEY-BRAUN) proposed an amendment to the bill, H.R. 3675, supra; as follows:

At the appropriate place, insert the following new section:

### SEC. . TRAIN WHISTLE REQUIREMENTS.

No funds shall be made available to implement the regulations issued under section 20153(b) of title 49, United States Code, requiring audible warnings to be sounded by a locomotive horn at highway-rail grade crossings, unless—

(1) in implementing the regulations or providing an exception to the regulations under section 20153(c) of such title, the Secretary of Transportation takes into account, among other criteria—

(A) the interests of the communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings as of July 30, 1996; and

(B) the past safety record at each grade crossing involved; and

(2) whenever the Secretary determines that supplementary safety measures (as that term is defined in section 20153(a) of title 49, United States Code) are necessary to provide an exception referred to in paragraph (1), the Secretary—

(A) having considered the extent to which local communities have established public awareness initiatives and highway-rail crossing traffic law enrollment programs allows for a period of not to exceed 3 years, beginning on the date of that determination, for the installation of those measures; and

(B) works in partnership with affected communities to provide technical assistance and to develop a reasonable schedule for the installation of those measures.

### LAUTENBERG AMENDMENTS NOS. 5144-5145

Mr. LAUTENBERG proposed two amendments to the bill, H.R. 3675, supra; as follows:

#### AMENDMENT NO. 5144

On page 19, strike lines 10 through 12 and insert "For the cost of direct loans, \$8,000,000, as authorized by 23 United States Code 108."

#### AMENDMENT NO. 5145

On page 60, line 20, strike "103-311" and insert "103-331".

### COHEN (AND OTHERS) AMENDMENT NO. 5146

Mr. COHEN (for himself, Ms. SNOWE, Mr. SMITH, and Mr. GREGG) proposed an amendment to the bill, H.R. 3675, supra; as follows:

Insert at the appropriate place:  
"No funds appropriated under this act shall be used to levy penalties prior to September 1, 1997 on the States of Maine or New Hampshire based on non-compliance with federal vehicle weight limitations".

### GRAMM (AND OTHERS) AMENDMENT NO. 5147

Mr. GRAMM (for himself, Mr. BOND, Mr. COATS, Mr. ABRAHAM, Mr. FAIR-

CLOTH, Mrs. HUTCHISON, Mr. LEVIN, Mr. WARNER, and Mr. HELMS) proposed an amendment to amendment No. 5141 proposed by Mr. BAUCUS to the bill, H.R. 3675, supra; as follows:

At the end of the amendment, add the following:

SEC. . Prior to September 30, 1996, the Secretary of the Treasury and the Secretary of Transportation shall conduct a review of the reporting of excise tax data by the Department of the Treasury to the Department of Transportation for fiscal year 1994 and its impact on the allocation of Federal aid highways.

If the President certifies that all of the following conditions are met:

1. A significant error was made by Treasury in its estimate of Highway Trust Fund revenues collected in fiscal year 1994;

2. The error is fundamentally different from errors routinely made in such estimates in the past;

3. The error is significant enough to justify that fiscal year 1997 apportionments and allocations of highway trust funds be adjusted; and finds that the provision in B appropriately corrects these deficiencies, then subsection B will be operative.

(b) CALCULATION OF FEDERAL-AID HIGHWAY APPORTIONMENTS AND ALLOCATIONS.—(1) IN GENERAL.—Except as provided in paragraph (2), for fiscal year 1997, the Secretary of Transportation shall determine that Federal-aid highway apportionments and allocations to a State without regard to the approximately \$1,596,000,000 credit to the Highway Trust Fund (other than the Mass Transit Account) of estimated taxes paid by States that was made by the Secretary of the Treasury for fiscal year 1995 in correction of an accounting error made in fiscal year 1994.

(2) ADJUSTMENTS FOR EFFECTS IN 1996.—The Secretary of Transportation shall, for the State—

(A) determine whether the State would have been apportioned and allocated an increased or decreased amount for Federal-aid highways for fiscal year 1996 if the accounting error referred to in paragraph (1) had not been made (which determination shall take into account the effects of section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1921)); and

(B) after apportionments and allocations are determined in accordance with paragraph (1)—

(1) adjust the amount apportioned and allocated to the State for Federal-aid highways for fiscal year 1997 by the amount of the increase or decrease; and

(2) adjust accordingly the obligation limitation for Federal-aid highways distributed to the State under this Act.

(3) NO EFFECT ON 1996 DISTRIBUTIONS.—Nothing in this section shall affect any apportionment, allocation, or distribution of obligation limitation, or reduction thereof, to a State for Federal-aid highways for fiscal year 1996.

(4) EFFECTIVE DATE.—This section shall take effect on September 30, 1996.

### AUTHORITY FOR COMMITTEES TO MEET

#### COMMITTEE ON ARMED SERVICES

Mr. MURKOWSKI. Mr. PRESIDENT. I ask unanimous consent that the Committee on Armed Services be authorized to meet at the following times on Wednesday, July 31, 1996:

9:45 a.m. in executive session, to consider certain pending military nominations;

11:15 a.m. in open session, to consider the nomination of Lieutenant General Howell M. Estes III, USAG for appointment to the grade of general and to be Commander-in-Chief, United States Space Command/Commander-in-Chief, North American Aerospace Defense Command;

1:30 p.m. in open session, to consider the nomination of Admiral Jay L. Johnson, USN for reappointment to the grade of admiral and to be Chief of Naval Operations; and

3:30 p.m. in executive session, to consider certain pending military nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be granted permission to meet to consider the nominations of Nils J. Diaz, and Edward McGaffigan, Jr., each nominated by the President to be a Member of the Nuclear Regulatory Commission, Wednesday, July 31, 1996, immediately following the first vote, in the President's Room.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON FOREIGN RELATIONS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 31, 1996, at 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON THE JUDICIARY

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, July 31, 1996, at 10:00 a.m. to hold a hearing on "Losing Ground on Drugs: The Erosion of America's Borders."

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON THE JUDICIARY

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, July 31, 1996, at 2:00 p.m., to hold a hearing on judicial nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Wednesday, July 31, 1996, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SELECT COMMITTEE ON INTELLIGENCE

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 31, 1996 at 9:30 a.m. to hold an open hearing on Intelligence Matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUBCOMMITTEE ON INTERNATIONAL FINANCE

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, July 31, 1996, to conduct a hearing on H.R. 361, "The Export Administration Act of 1996."

The PRESIDING OFFICER. Without objection, it is so ordered.

### ADDITIONAL STATEMENTS

#### MORE THAN A ROOF

• Mr. SIMON. Mr. President, for many years I have had the privilege of knowing Ed Marciniak, now president of the Institute of Urban Life at Loyola University, who chairs the City Club of Chicago's committee on the future of public housing in Chicago.

He had a commentary on public housing that was published in *Commonwealth*, which is really more of a commentary on poverty and urban life and what we ought to do. He says:

The average income of families living in Chicago's public housing is \$2,500. Broadly speaking, a fatal flaw of these projects is that they provide tenant families with little else than space: little in the way of opportunity or incentive to better themselves and their children. In most cities the high-rise projects, often with as many inhabitants as a small town, house not a single teacher, nurse, firefighter, manager, technician, or civil servant and offer few role models for the children, few standard-setters for the adults, and scant motivation to become self-sufficient.

Recently Congress has approved a pilot project called *Moving to Opportunity*. Marciniak points out that it was based on a model in Chicago. He writes:

*Moving to Opportunity* was modeled on a successful program sponsored by Chicago's Leadership Council for Metropolitan Open Communities. Since 1976, the Council has used federal funds to screen and then relocate more than 6,000 public housing families, most of them female-headed, into privately owned apartments, half of them in suburbs. By bidding good-bye to public housing, most of the families not only bettered their living conditions but also greatly improved their children's opportunities. Among the suburban children only 5 percent dropped out of school, 54 percent attended college, and 27 percent found jobs. When people's expectations were raised and standards established,

many started living up to them. Residential mobility made a difference.

I have had a chance to observe this program and it is a great step forward.

With a little creativity and sensitivity we can do much better in this country.

What is required is that we recognize that we have to do something to address the problems of those who are the least successful now in our society. They lack success not because of lack of ability in most cases, but because they find themselves trapped.

We have to open that trap.

Mr. President, I ask that the article from *Commonweal* be printed in the Record.

The article follows:

#### MORE THAN A ROOF—PROMISING MOVES IN PUBLIC HOUSING

(By Ed Marciniak)

Not long ago, I attended a national housing conference where a featured panelist was a woman introduced as a longtime resident of public housing. She herself then noted, matter-of-factly, that she had lived in public housing for forty-five years. For me, that admission was mind-blowing. Even more startling, however, was the realization that her remark had not caused even a ripple of surprise among the subsidized-housing professionals in the audience. Nonchalantly, they had come to accept public housing's way of life as a given for which they felt no personal responsibility.

It's unlikely that informed members of the general public are so complacent, whether as taxpayers concerned with the costs or as citizens aware of the pathologies associated with much public housing. People in the know are beginning to insist that government subsidies must not only meet their recipients' immediate needs but must be oriented toward helping them become self-supporting. Recent developments in and around Chicago, the area I know best, confirm that most public housing clients, the poorest of the urban poor, have not given up. Many have already helped themselves escape the trap that public housing has become. We now know that there are ways of giving them a chance to do so that have been tested, at least on a small scale, and found workable. These approaches deserve to be better known and more broadly applied. But, as will be seen, many questions need to be asked and answered.

In a bipartisan effort, Congress is currently overhauling the U.S. Housing Act of 1937. Despite its noble purpose and promising beginnings with scattered, low-rise public housing, that legislation has produced something of a monster. Today the U.S. Department of Housing and Urban Development [HUD] finances some 1.4 million apartments owned and managed by local housing authorities. Another 1.5 million privately owned units are federally subsidized through rent vouchers of one kind or another. Taking into account these programs and a host of others sponsored by HUD, the department has become the nation's largest slumlord.

But the problem is not primarily the numbers or costs. Our giant high-rise public housing projects have become ghettos for the urban poor: conglomerations riddled with drugs, gangs, crime, and poverty, peopled by far too high a proportion of single-family households, some now in their third and fourth generation. The average income of



families living in Chicago's public housing is \$2,500. Broadly speaking, a fatal flaw of these projects is that they provide tenant families with little else than space: little in the way of opportunity or incentive to better themselves and their children. In most cities the high-rise projects, often with as many inhabitants as a small town, house not a single teacher, nurse, firefighter, manager, technician, or civil servant and offer few role models for the children, few standard-setters for the adults, and scant motivation to become self-sufficient.

In recognition of these realities, Congress has persuaded HUD to begin dismantling these housing projects by giving residents, through rent vouchers, the option of living in privately owned housing in mixed-income neighborhoods; by scattering low-rise public housing throughout the city and its suburbs; by tearing down vacant high rises instead of rebuilding them; by using HUD dollars to attract other investment in additional housing for families of low and moderate income; and by stricter screening of applicants and the prompt eviction of lawbreakers who are drug dealers or gang leaders. In April, HUD Secretary Henry G. Cisneros released a report on "The Transformation of America's Public Housing," reporting these and other steps HUD is taking to ensure "long-term recovery."

Congress has approved, though as a pilot project, a "Moving to Opportunity" initiative, which offers public housing families a chance to move to scattered-site public housing in the city or the suburbs. This modestly funded program, already in operation in Baltimore, Boston, Los Angeles, New York, and elsewhere, is being evaluated by its success or failure in escorting families into the urban mainstream. Important data will be collected about families who become home owners or leaseholders paying conventional rents. What were the bridges or escalators they used to leave public housing? Who provided the ladders of opportunity? Are the relocated families now in better housing? How many stayed in the suburbs, how many moved back to the city?

"Moving to Opportunity" was modeled on a successful program sponsored by Chicago's Leadership Council for Metropolitan Open Communities. Since 1976, the Council has used federal funds to screen and then relocate more than 6,000 public housing families, most of them female-headed, into privately owned apartments, half of them in suburbs. By bidding good-bye to public housing, most of the families not only bettered their living conditions but also greatly improved their children's opportunities. Among the suburban children, only 5 percent dropped out of school, 54 percent attended college, and 27 percent were enrolled in a four-year college. As for the parents, 75 percent found jobs. When people's expectations were raised and standards established, many started living up to them. Residential mobility made a difference.

This good news is part of a larger movement toward depopulation of Chicago's family projects; occupancy has decreased from 137,000 in 1980 to 80,000 in 1995. More importantly, the council's work reflects a growing awareness among government and private funders of antipoverty programs of the need to find answers for certain key, long-neglected questions. How do people shed chronic dependency to achieve self-sufficiency? How do we reverse the nation's poverty rate, which declined in the 1970s and early 1980s but has been inching up ever since? How is the underclass turned into a working class?

Accordingly, the role of the private sector serving poverty-engulfed neighborhoods is also under scrutiny. Churches, social service agencies, youth clubs, and counseling centers are being asked to link short-term aid to more lasting improvement, to do more than collect the statistics on Sunday attendance, on youngsters who use the gym, on Christmas baskets, on kids in day care, on midnight basketball, or on mothers in self-improvement classes. Funders want to know whether and how their dollars made a difference: How many of the families were no longer on public aid? What percentage of the teen-agers finished high school? How many adults found jobs?

Similar questions can be and are now being asked about the persistence of homelessness. How did it happen that the homeless were made the immediate responsibility of local housing officials? Many of the homeless are jobless or the victims of a family break-up. Many were evicted from mental health institutions and dumped mercilessly on city streets. Some are vagabonds, down-and-outers addicted to drugs and/or alcohol. All may qualify as homeless, but what they desperately need encompasses a lot more than a space to live in.

Too often, of course, discussion of such problems devolves into ideological debates, focused on "Who is to blame?" rather than on "What is to be done?" On homelessness, however, as with public housing, there are pragmatic initiatives in play. An example is Deborah's Place in Chicago, a shelter for homeless women but with a difference. From day one, the purpose of Deborah's Place has been to help the women return to a more normal lifestyle—a job, a family, or, in case of need, to a caring institution that matches the woman's special problem. At three different locations, each with a staged program, Deborah's Place works to "help women leave the streets and shelters behind for new lives of independence, productivity, and well-being." As clients move up and out, they leave room and time for other women to be assisted.

On ending joblessness, strategy can also make a difference. Suburban Job Link, with offices in Chicago's South Lawndale community and suburban Bensenville, uses a unique method for promoting upward mobility. On contract with relatively job-rich suburban employers, the organization buses workers to temporary jobs that often lead to "working interviews" for applicants who want to demonstrate their potential to fill entry-level positions. Factory owners and other employers are invited to hire any worker full-time without a fee, thus supplying the missing rung on a stepladder to year-round employment. Through its "no-charge" arrangement, Job Link will place 1,000 "temps" into regular jobs with benefits in the next twelve months. Finally, it continues to bus the newly hired until they arrange transportation on their own, through a car pool, for example. As a not-for-profit, Job Link is funded by government and foundation grants and by its own earned income.

Another strategic point of entry for encouraging upward mobility has to do with school choice. Over the past decade it has become evident that nonpublic schools, especially those under religious sponsorship, have been remarkably successful in easing not only children but also their low-income parents into the urban mainstream. Nearly one of every four youngsters enrolled in an elementary or secondary school in Chicago attends a nonpublic school. Now, hundreds of scholarships to attend Catholic, Lutheran,

and Episcopal schools are given to youngsters who live in the Cabrini Green, Henry Horner, Rockwell Gardens, and other public housing projects. The aid covers only part of the tuition, requiring parents or guardians to pay the balance and fees.

Though statistics are not available, it is our experience that the decision by a public housing family to enroll children in a private school is often the first step that eventually leads to an apartment in the private housing market. The choice made by a deserted mother, taken at personal sacrifice, is rewarded and reinforced when she sees that her child is in fact making educational progress; she is likely to strive even harder to climb out of poverty in order to continue sending her child to the school of her choice.

A final example—useful even though at present it is a matter of aspiration rather than achievement—returns to a housing program. It will be operative in 1997 when Chicago's Lawson YMCA finishes rehabilitating its twenty-five-story building to provide 583 single-occupancy rooms. The difference here lies in the overall aim, which is not just to provide livable space for otherwise homeless persons but also to help people who are homeless, jobless, and difficult-to-employ get jobs, preferably within walking distance, and become self-sufficient. The YMCA staff will work, for example, with people who are recovering from substance abuse by concentrating aggressively on job training and job getting. Success will be measured not just by occupancy rates but, more importantly, by the number who have moved to independent living.

As with the other examples, the virtue of the YMCA initiative lies in its responding not just to today's need but also to tomorrow's challenge. To paraphrase columnist Robert J. Samuelson, the United States struggles through a soul-searching transition from an era of entitlement to an era of responsibility. ♦

#### MODEL EMPLOYMENT PROGRAMS FOR EX-OFFENDERS

♦ Mr. CAMPBELL. Mr. President, I take this opportunity to recognize the continued outstanding accomplishments of a model employment program for ex-offenders in my home State of Colorado.

The Golden Door program, founded and developed by Bill Coors, president of the Coors Brewing Co., was implemented 28 years ago this month. The goal of Golden Door is to provide ex-offenders with a comprehensive program for reentry into society with a focus on employment. In addition to an employment opportunity targeting people with limited employment skills, the Golden Door program offers an education, training in personal finances, general counseling, and the stability that allows people to successfully maintain a job.

Eighty percent of the participants in the Golden Door program complete it successfully and move on to assume full-time positions within the corporation. While this kind of opportunity is somewhat rare, Colorado has proven that the concept can be effectively duplicated, proving profitable to the sponsoring business, the community and the participants.

Bill Coors' vision for a better community and a second chance for people has left the State of Colorado with his legacy of philanthropic efforts and a solid example to which businesses, small and large alike, can aspire. It was in 1994 that I first called the attention of Congress to the Golden Door program, commending its good will and success. I also used that opportunity to express my support for the Targeted Jobs Tax Credit—now the Work Opportunity Tax Credit—initiative, a program designed to assist smaller businesses in employing people of similar target groups.

Since then, a variety of other legislative action has been taken to encourage the successful reentry of ex-offenders into society. Employment training is being institutionalized in prisons, and Congress is working to safeguard the continuation of these programs as we move through the legislative process.

In addition to highlighting the ongoing success of Golden Door and the Nation's concern over reducing the rate of recidivism, I would like to recognize a sister program to Golden Door called Gateway Through the Rockies, a community partnership to reduce criminal recidivism. The El Paso County, CO, Sheriff's Department recently kicked off Gateway to provide inmates nearing release with a comprehensive program of education, counseling, work experience, social skills training and post-release support. Modeled after Golden Door, Gateway offers ex-offenders a second chance at no cost to taxpayers.

Golden Door and Gateway Through the Rockies are shining examples of how communities and businesses can work together toward improving the quality of life for the community, while drastically reducing the cost we now incur by simply shuffling people in and out of the penal system. On July 11 of this year, my colleague, Senator GRAHAM, stated in a Senate floor statement that in Florida, "the recidivism rate among those prisoners who have been through our prison industry program is one-fifth of the recidivism rate of the population as a whole." These figures are impressive. It is my hope that in our effort to practice fiscal responsibility and become a less intrusive and yet more responsive government, we would make practical decisions regarding that segment of our community that has paid its debt and is capable of making a positive contribution. Programs serving as this segue simply makes sense.

Mr. President, I would like to state my commitment to encouraging such programs and exploring potential legislative initiatives to facilitate community partnerships to reduce recidivism. Again, my thanks to all of the individuals, organizations and businesses for their ground-breaking contributions to community-based programs in Colorado and across the country.●

#### CITY CAB CO.

● Mr. LEVIN. Mr. President, I rise to honor City Cab Co. on its 68th anniversary. City Cab Co. is the Nation's oldest African-American taxicab association.

On July 17, 1928, a group of ambitious African-American taxi drivers met in Detroit to discuss the possibility of starting a nonprofit corporate association because they were not accepted at the major cab company. Two weeks later, City Cab Co. was founded with nine charter members. City Cab membership has grown over the last 68 years, and as the company has remained in the city since its inception, it has become closely involved with the community. City Cab has transported children with special needs to and from school for over 30 years free of charge. This year, an anniversary gala will benefit these children further with proceeds going to scholarship fund.

City Cab has shown the people of Detroit what it means to be a supportive partner of the community. I know my Senate colleagues join me in congratulating City Cab Co. on its 68th anniversary.●

#### THE GATHERING STORM

● Mr. BRYAN. Mr. President, I urge my colleagues to read an article by Maj. Gen. Edward J. Philbin, which I ask be printed in the RECORD. In the wake of downsizing our national defense apparatus, we will come to rely even more on the capabilities of United States' Reserve Forces. As Members of Congress, we should take it upon ourselves to insure that guard and reserve units are prepared to carry this mission well into the next century.

The article follows:

[From National Guard, June 1996]

#### THE GATHERING STORM

(By Maj. Gen. Edward J. Philbin (ret.))

Recently, I was conducting experiments on the aerodynamic behavior of low-altitude, low-velocity spherical bodies at the Andrews Air Force Base golf course. Like all weather-wary flyers, I kept a suspicious eye on the mutating cloud formations overhead. Across the initially cloudless, blue sky crept wisps of white, which slowly burgeoned into rising silver cloud towers, the pinnacles fattening into great overhanging mushrooms of gold and purple. Progressively, the sky was darkened by a great sea of these forbidding gray thunderstorms. And then, these "duty boomers" unleashed a lightning barrage, which generated peals of thunder, followed by a monsoon-like deluge of water.

With apologies to Winston Churchill for appropriating one of his titles, I was struck by the similarity between this atmospheric spectacle and the acerbic treatment accorded the Army Guard since Operation Desert Shield/Desert Storm almost six years ago. At that time an orchestrated public affairs attack on the Army Guard was launched, concentrating on the three roundout brigades federalized on November 30, 1990. The most popular target of abuse was Georgia's 48th Infantry Brigade, roundout to

the 24th Infantry Division, because of its alleged post-mobilization ineptitude at the National Training Center (NTC). The fact that the 48th Brigade had, before mobilization, been consistently evaluated as combat ready by the 24th Infantry Division was ignored. Also ignored was the 48th's call-up 3½ months after its parent division was alerted for Gulf deployment. Also never mentioned was the fact that, despite all the obstacles placed in its path at the NTC, the 48th was revalidated as combat ready in 91 calendar days, which was just one day more than scheduled, and on the very day the cease-fire went into effect. During those 91 days, the 48th Infantry Brigade spent only 65 days actually training.

Despite these facts, the 48th has been continually flogged and castigated by the media for "failure" to deploy to the combat area. With relentless determination, the media have published a rash of articles emphasizing fictional failings rather than positive accomplishments of the 48th, concluding that since the 48th "couldn't hack it," then none of the Army Guard "can hack it." This World War II tactic relies on the theory that "if you tell a big enough lie, and tell it often enough, most people will eventually believe it." The audience for which this propaganda is intended is the members of Congress in the hope they will relegate the Army National Guard to a state constabulary.

The Reserve Officers Association (ROA), in its May issue of the ROA National Security Report, published the written testimony of Richard Davis, General Accounting Office (GAO), which was presented at a hearing before Senator John McCain (R-Arizona). Davis, among other things, claimed that "at least one reserve component has not sufficiently adapted to the new challenges [of regional dangers rather than a global Soviet threat] and therefore may not be prepared to carry out its assigned missions." Guess which one? It's the Army National Guard. Davis went on to state that (1) the "Army National Guard has considerable excess combat forces" while the "big Army" hungers for more combat support units; (2) "the ability of some Army National Guard combat brigades to be ready for early deployment missions \*\*\* is highly uncertain," suggesting that Army National Guard roles and missions should be "modified;" and (3) the Air National Guard force dedicated to continental air defense "\*\*\* is not needed today" and eliminating them would free "considerable funds" for better use. Since this issue will be resolved cooperatively with the United States Air Force and the Congress, no further comment will be made here.

Davis, whose resumé is devoid of any hint of military experience, grounded his opinion upon the alleged military deficiencies of the three Army National Guard brigades, federalized for the Gulf War. However, those three brigades met the Army's deployability criteria, but were never given the mission to deploy and no sealift was ever requested or scheduled for them. I repeat: All three roundout brigades and the three additional Guard battalions (Texas, Alabama and South Carolina) met the readiness deployability criteria established by the Army Mobilization and Operations Planning System (AMOPS) on the first day of federalization.

The truth, obscured by the slanderous billingsgate that has been spewed on the Army Guard, is that Operation Desert Shield/Desert Storm was a significant success for the Army National Guard as well as the "big Army." Army Guard volunteers filled critical positions early in the crisis. It was successful in rapidly deploying 60 COL/LTC level



commands to SWA, all of which made a significant contribution to Operation Desert Storm/Desert Shield.

Due to years of preparation, Army Guard units were ready for federalization and were successful. All Army Guard units were at their respective mobilization stations within 72 hours of federalization. More than 97 percent of ARNG units met or exceeded deployability criteria when federalized. Sixty-seven percent of all Army Guard units deployed within 45 days of being federalized. The primary obstacle to an even earlier deployment was unavailability of sealift and airlift.

Almost 100 percent of the Army Guard soldiers called-up reported for active duty and more than 94 percent of the units' soldiers were deployable. Of the unit troops, only six percent (3,974 of 62,411) were ineligible for deployment under statutory provisions and DoD guidelines.

Before federalization, the combat readiness of the Army National Guard was at an historic high. The Army Guard demonstrated its ability to alert, federalize and rapidly deploy to the theater of operations (CENTCOM)—reports to the contrary notwithstanding.

Did Mr. Davis (B.S. degree in accounting; M.S. in business administration) consider any of these data in arriving at the apocalyptic conclusions about the Army National Guard's military prowess? If he did, he didn't mention it in his written or oral testimony. But his oral testimony was liberally buttressed with statements such as: "I think," "I believe," "it's my opinion," but no evidence was given.

Our "good friends" in the ROA never mentioned these facts to their readers. Nor did ROA mention that for various reasons a considerable portion of the Army Reserve is not deployable. Probably that is the reason the Army Reserve is energetically blocking the path of Army Reservists who wish to transfer to the Army Guard. ROA claims that the purpose of its National Security Report is to inform Reservists of the facts of readiness issues. Yet, ROA publishes only material that denigrates the Army Guard. The motive may be found in the following excerpt from a commentary printed beside the Davis testimony:

"Anyone reading carefully between the lines of the articles contained in this month's NSR will become aware of the riptides and undercurrents that can impact negatively on the future size and role of the Reserves if we (ROA) are not careful. The problem is that many Reserve officers assigned to units feel they do not have to join ROA in order to take advantage of the benefits of the highly effective legislative work ROA does on their behalf on Capitol Hill."

Sounds more like a membership drive than a crusade for the truth.

ROA followed Mr. Davis' fantasy with two other articles presented as if they were hot-off-the-press news flashes: "21st Century Force: A Federal Army and a Militia" and "The State Militia." In fact, as the Brits say, they were "mutton dressed up as lamb," having been written in 1993 at the Army War College's Strategic Studies Institute, by COL Charles Heller, who was an Army Reserve advisor.

Heller's first article blames the "inordinate influence" of the AGAUS and NGAUS for the "big Army's" alleged difficulty in structuring a stronger Total Army. Not surprisingly, he paints the Army Reserve and ROA as more responsive to and supportive of the "big Army." Predictably, Heller alleges

that the Army Reserve call-up and its service in the Gulf War were exemplary, while Army Guard combat maneuver elements required, "lengthy post-mobilization training and then [did] not deploy to the Gulf." Heller concludes that, "the Total Army should be organized into two components—a federal Army (Active Army and the U.S. Army Reserve) and a militia (the state Army National Guard)." He stops short, just barely, of advocating equipping the Army Guard with horses, lances and swords.

Heller proposes that the Army Reserve be made responsible for the Federal Emergency Management Agency (FEMA). That's very interesting, since the ROA leadership, which published Heller's musings, now professes to have utterly no interest in seeking new jobs for the Army Reserve. Yet, they feverishly sought and probably still seek passage of the Laughlin Bill (H.R. 1646), which would have intersected the Army Reserve into the National Guard's constitutional state mission.

Very solicitous of the National Guard's welfare, Heller worries that the Army Guard will have no time to train adequately for both the state and federal mission, alleging without explanation that the Army Guard failed in the Gulf deployment and in the Los Angeles riots. He proposes of that the Army Guard should concentrate on the state mission. He also advocates USAR involvement in the state, as well as the federal, mission in a contradiction in his argument, which in his exuberance to redesign the Army Guard, he ignores.

His opinions and conclusions are heuristic, self-serving, internally contradictory and unsupported by any evidence. All of these allegations are refuted by the actual performance of the Army Guard in the Gulf War. But Heller performs a valuable service by raising an extremely important question: Why have two Army Reserve components? Why, indeed? Certainly, the constitutional framers recognized, as did George Washington, the need to establish a full-time standing army and accordingly gave Congress the power to raise and support armies—and only standing armies were contemplated by that particular language. The Founding Fathers never intended and the sovereign states never granted the federal government the power to organize and maintain a federal militia over which the states would have no control. They recognized the necessity of a well-regulated militia and, in the Militia Clause of the Constitution (Art. I, Sec. 8, Cl. 16), they made provisions accordingly. It is under this clause that the militia and its modern counterpart, the National Guard, have developed.

A propaganda storm has been gathering and thickening around the Army National Guard since the Gulf War. These libels are intended to generate thunderous doubt about the capability of the Army Guard to perform its federal mission; to generate lightning bolts of criticism of the Army Guard from the Congress and ultimately to create a legislative deluge in which the Army Guard will sink into oblivion. This storm has been energized by the hunger of the National Guard would-be competitors to co-opt our missions and the share of the federal military budget that supports these missions.

There are two ways to deal with an imminent thunderstorm. One way is to huddle under an umbrella, close your eyes to the lightning, put your fingers in your ears to mute the thunder and hope for survival. The other way is to seed the clouds with a defusing substance like silver iodide, dissipate their destructive energy and make them vanish. The time may be at hand when support-

ers of the National Guard must resort to the defusing technique, which might very well answer, once and for all, Heller's question. Why have two Army Reserve components?

Why, indeed, when the United States Constitution authorizes only one—the National Guard.

Note: As this article was being written, troops of the 48th Brigade were packing up to once again deploy to the NTC. On April 23, Mr. Davis' GAO Division notified DoD that it was initiating, on its own authority, a review of "Roles, Missions, Functions and Costs of the Army Guard and Army Reserve." Be assured that the NGAUS will be scrutinizing both events for any signs of dissembling.

## LAKE SUPERIOR STATE UNIVERSITY

• Mr. LEVIN. Mr. President, I rise today to honor Lake Superior State University on the 50th anniversary of its founding. The University has a long and interesting history.

In 1822, Colonel Hugh Brady established a fort in Sault Ste. Marie along the Saint Mary's River. The fort was later named after Colonel Brady, its first commanding officer. In 1866, Fort Brady was rebuilt to protect the State lock and canal from invasion or destruction. In 1892, Fort Brady was moved to a nearby hill-top because increased commercial shipping raised the value of river-front property.

During World War II, Fort Brady saw a lot of action as over 20,000 troops were stationed there for training. The Army used the winters of the region to condition its snowshoe troops for warfare in northern Europe. At the end of World War II, Fort Brady was placed on inactive status.

After Fort Brady's closing, local businessmen and officials were prompted to find a way to keep the recently renovated buildings and property in use. At the same time that residents were working to keep Fort Brady functioning, the Sault branch of the Michigan College of Mining and Technology (currently Michigan Technological University) was being inundated with applications from war veterans. It was quickly decided that moving the school to Fort Brady would solve both problems.

In 1946, the Michigan College of Mining and Technology opened with a class of 272. The Sault Ste. Marie branch offered classes in chemical, electrical, and mechanical engineering and in forestry. Michigan State University assisted in the founding of a general studies program that offered liberal arts credits for the first 2 years of course work that were transferrable to other institutions.

In 1966, the college was renamed Lake Superior State College. The State Board of Education accorded the College 4-year status and authorized it to grant baccalaureate degrees. The College's first class of 4-year students graduated in 1967. The College separated from Michigan Technological

University in 1970, and on November 4, 1987, Governor James Blanchard signed legislation changing Lake Superior State from a College to a University.

Over its 50 years, the University has grown steadily and currently has an enrollment of approximately 3,500 students. Lake Superior State has maintained the school's small personal atmosphere, while achieving national recognition for accomplishments such as winning three NCAA division 1 hockey titles. In the field of academics, the school is particularly known for the quality of its criminal justice and nursing programs.

Over the past 50 years, Lake Superior State University has prepared thousands of students, including several members of my Senate staff, to contribute to the State of Michigan and the Nation. I know my Senate colleagues will join me in honoring Lake Superior State University on its 50 years of service to the community. •

#### TRIBUTE TO HARRIET TRUDELL

• Mr. REID. Mr. President, I rise today to honor one of Nevada's living legends, Harriet Trudell. Harriet has had many titles during her life, from democratic activist, human rights advocate, lobbyist, feminist, campaign manager, and champion of the poor, to mother and grandmother. To me, Harriet is both a valued friend and a trusted advisor. To her country and the State of Nevada, she is a courageous and tireless fighter who can always be counted on to tell it like it is.

For more than 20 years, Harriet has been a key player in the public arena, both in Nevada and across the Nation. She is an invaluable asset to all of the many organizations and groups to which she has lent her energy, her fervor, and her skill. Harriet has a strong voice, a quick mind, and a political acumen which she uses to great effect for those who often lack a voice in our society. Both her compassion and her outrage at injustice drive her to organize, inspire, and fight, long after most would have been exhausted. From marching in protest down "the Strip" in Las Vegas, to addressing the State legislature or lobbying Members of Congress, Harriet sticks to her convictions and never gives up the fight.

Over the years, whether she was serving on my staff or for another organization, Harriet has fought for those in our society who are so often forgotten. Whenever there is a social issue confronting Congress, I can always expect a phone call from Harriet to remind me of my obligations. She is a champion of women, children, minorities, and the poor. When tough decisions have to be made, Harriet is there serving as our conscience. Even when her causes are politically unpopular, she steadfastly speaks out for justice.

It is my pleasure to speak today in tribute to Harriet Trudell—a Nevadan

and a patriot—and congratulate her on being selected for a well-deserved honor by the Southern Nevada Women's Political Caucus. Nevada and the Nation owe Harriet Trudell a debt of gratitude. •

#### TRIBUTE TO JOSH WESTON

• Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Josh Weston who is retiring as chief executive officer of Automatic Data Processing. It's been said that you can't judge a businessman by intentions, but by results. If that's true, then we can only judge Josh Weston as an incredible success. Josh joined ADP in 1970, and he has far exceeded the high expectations I had for him.

During his 14 years as chairman and chief executive officer of ADP, Josh's leadership accelerated ADP's already extraordinary record of excellence. In the words of Wall Street Stock analyst James A. Meyer, "This company is so well managed that it's the envy of everyone on Wall Street."

Josh has decided that it's time to pass on his mantle at ADP, and he leaves a legacy that was not only good for ADP, its staff, clients, and shareholders, but for our country. His extraordinary talent for management will serve as a model to be studied by managers across our corporate society.

ADP has grown phenomenally since two friends and I joined together in the early 1950's. It went public in 1961 and continued to grow and prosper; in fact, ADP is the only public company in the Nation to achieve consistent, record growth in earnings and revenue for 139 quarters—nearly 35 years. In the most recent quarter, which ended on March 31, ADP earned a net \$143.9 million. Earnings grew 15 percent and revenue 20 percent.

Yet, ADP's success goes far beyond the debit and credit columns. It currently has 350,000 clients, prepares checks for 19 million, and enjoys a financial history which has made investors, many of them ordinary ADP employees, financially secure. In addition, ADP provides jobs for 5,000 New Jerseyans and employs 29,000, worldwide.

Much of this success is due to the leadership of Josh Weston over the past 14 years. He did it by following and building upon ADP's established formula for success: striving to master new technology, to improve efficiency, to attract outstanding staff, to make profits every employee's responsibility, and to develop new products and markets.

But perhaps most importantly, ADP has always invested in the morale, skills and training of its employees. These valuable men and women are ADP's greatest resource, and Josh never failed to recognize this fact. In fact, in a recent article in the Newark

Star Ledger, Josh credited "teamwork" as the key to ADP's success.

Although an extremely successful businessman, Josh has always believed that we make a living by what we gain, but we make a life by what we give. And Josh's contributions to his community are considerable. The numerous Pro Bono Boards on which he has been active include Chairman of Boys Town of Jerusalem; Chairman of Mountaintop Hospital; Vice-Chairman of the Tri-State United Way; New Jersey Symphony Orchestra; Atlantic Health System; WNET/Channel 13; I Have a Dream Foundation; Montclair Art Museum; Montclair State University Business School; New Jersey Quality Education Commission; National Conference of Christians and Jews; New Jersey University of Medicine and Dentistry; etc. This sampling undeniably demonstrates Josh's breadth and depth of commitment.

For the past 14 years, Josh Weston and ADP have been a great team, but Josh has decided that it's time to relinquish the CEO title to ADP's current president and chief operating officer, Art Weinbach. As usual, Josh made an excellent decision.

Management gurus John Clemens and Douglas Mayer once noted, "From a management viewpoint, Shakespeare's King Lear is a tragedy because Lear failed to understand two managerial concepts: the need to select competent successors and the need to let go." Josh undeniably understands these concepts. However, ADP will miss his vision and vitality. Josh Weston is not just a businessman or an executive; his record of accomplishment, his commitment to his customers and his loyalty to his employees distinguishes him as a true leader.

I am proud to call him a friend, and I wish him the best as he goes on to other challenges. •

#### GEN. COLIN POWELL

• Mr. SIMON. Mr. President, few would dispute the fact that one of the most distinguished and highly respected public servants in our lifetime is Gen. Colin Powell.

I read in Carl Rowan's column of a speech he gave at a commencement at Bowie State University.

I contacted General Powell to obtain a copy of it, and I have just read his remarks for the second time.

They are common sense. They are compassionate. They are forward-looking.

A significant part of his remarks, in my opinion, is what he has to say about affirmative action.

Affirmative action can be abused like any good thing can be abused. His comments should be spread much more widely than simply to this graduating class.

I ask that Gen. Colin Powell's remarks be printed in the CONGRESSIONAL RECORD.



The remarks follow:

REMARKS OF GEN. COLIN POWELL

I can never speak at a commencement such as this without the years peeling away as I drift back into a reverie of my own commencement some 38 years ago. The world you have educated yourselves for is so very, very different from the world that I started in those many years ago.

I graduated as the Cold War was deepening, as lethal arsenals of nuclear weapons were growing ever more ominous. The world in 1958 that I entered was a world that seemed on the verge of gloom and despair. For most of my years as a soldier, for most of those 35 years, I participated in a death struggle of survival between the forces of Communism and the evil empire, and the forces of good, the forces of democracy, that we represented. It was a long, long struggle, a struggle that dominated most of my life.

I can still remember the commission I got at my ROTC graduation in 1958. It was signed by Dwight Eisenhower, and the mission they gave Lt. Powell at that time was simple. "Lt. Powell go to Germany. Take command of 40 soldiers. Find the City of Frankfurt. Go to the east of the City of Frankfurt. You'll find the Iron Curtain. Lt. Powell, with your 40 soldiers, guard a small section of the Iron Curtain. In the time of war, don't let the Russian Army come through. Got it?" "Yes, sir. Got it." And I did that for two years, successfully preventing World War II from breaking out.

The years went by, and 28 years later, I got a new commission. This time from Ronald Reagan, and he made me a Lieutenant General of Infantry. And they gave me 75,000 proud American soldiers to command. And 28 years later, my mission was, "General Powell, with your 75,000 soldiers, you'll be in Germany, find the city of Frankfurt. Go the east of the city of Frankfurt. Guard a slightly wider section of the Iron Curtain this time. Try to do as good a job as you did when you were a Lieutenant."

During your years here at Bowie, that Cold War came to an end. The arsenals of nuclear weapons are being dismantled. The Soviet Union has broken into 15 individual nations, each seeking its own way down a difficult path of learning how democracy works, mastering the mysteries of free enterprise and market economic system. Communism lies discredited, its few remaining adherents clinging to the corpse of a dead ideology.

This historic reconciliation that has taken place between East and West has changed the old Cold War map that used to be red and blue with an Iron Curtain between the colors into a new kind of map, a map full of mosaic pieces, different colors as new nations and old nations seek to find a new way in a different kind of world, a world structured as a world trading system as opposed to a world in conflict.

This reconciliation that took place between the Soviet Union and us is matched by other historic reconciliations that have taken place around the world in recent years. In the Middle East, the peace process is moving forward that we hope will be successful in finally bringing peace to that troubled part of the world.

In South Africa, Nelson Mandela who was on trial when I graduated from college and who spent 27 years in prison, is now the president of his country. And in his triumph, he killed the evil ideology of Apartheid.

In our own hemisphere, as I think back just seven years to when I was National Security Advisor to the President of the United States and we had all kinds of problems here

in Haiti, in Nicaragua, and Honduras and El Salvador and Panama and now, all of those nations are moving forward down the road to democracy with elected civilian leaders; all of them save one, Cuba. But Cuba cannot withstand the winds of historic change that are sweeping across our hemisphere. In Asia, the pattern is the same as we watch the Philippines and India, the Southeast Asia tiger, Vietnam, even China, emerging into this new world trading system.

You are entering a world where our former adversaries, those that we were in conflict with for all these decades, have now become our economic competitors as well as becoming our new markets, new opportunities for us.

It is not a world without problems or conflicts. Bosnia, Liberia, North Korea, and other places of tragedy remind us on our television sets every evening of the dangers that will lurk ahead. Yet, I want you to see this as a time of hope and optimism because our value systems have prevailed.

There is no cross-border war anywhere in the world today. No nation is fighting with any other nation across a national border. American troops on this Memorial Day are not at war. Instead, they are conducting peacekeeping operations. In Bosnia they are even working alongside Russian soldiers who were once their sworn enemies.

The world that you are entering to make your contribution will increasingly be structured not by armies staring at each other across iron or bamboo curtains. Instead, it will be structured by free world trade, by the power of the information and technology revolutions, by the instantaneous flow of capital, data, ideas, values. The cellular telephone, the fax machine and the Internet are breaking down all the old Cold War boundaries that once divided people.

What will not change is the responsibility that America will have to burden the very difficult, difficult task of world leadership. We have power that is trusted. We are still a beacon of freedom, and we are still an example of what can be achieved, what can be accomplished when free people are allowed to determine their own destiny.

With the end of the Cold War, we have now turned inward here in America to start to deal with those vexing problems that, perhaps, we overlook while we were worrying about nuclear warfare and World War III. We look inward and know that we need a more rapidly growing economy to provide good, well-paying jobs for all Americans. We know that we have to do something about the problems of violence on our streets and violence in our schools. We have to do something about an education system, while it serves you well, it is not structured to serve all our youngsters well.

We must do something about the scourge of drugs that threatens to wipe out an entire generation of young people. We will have to deal with the breakdown that has occurred in the norms of civility within our society which have led to such public and political rancor that causes us to wonder what kind of a society we are becoming. We must do something about the racial separation that exists in our nation and keeps us from the dream of an integrated society that Dr. King set out for us.

In some ways, the new world that we face will be more complex and demanding than the old world, both here and abroad. But despite the challenges, incredible opportunities await you in this new world, opportunities that await educated people. The education you received here, the additional education

you must acquire in whatever field of endeavor you enter—because in this increasingly technical and competitive world, success will go to those who realize that education must now become a lifelong pursuit.

America will not be going back to smoke-stack industries. The corporate restructuring that you see taking place allow us to be more competitive, more agile, more ready to deal with the challenges of a world economic system. You each face the prospect of several different careers in several different companies in different places around the country and around the world as you go about your working career.

America has changed in so many, many wonderful ways since my graduation in 1958. When I graduated as a black man, I was, by law, a second-class citizen. When I graduated in 1958, the Declaration of Independence and the Bill of Rights didn't fully apply to me. I entered at that time perhaps the only institution in America that permitted a black person to rise in an integrated setting limited only by my own willingness to work hard and my dreams and ambition. And that institution was the United States Army.

The Army led the nation, and the nation followed. The young Captain Powell who was once refused service at a lunch counter in Georgia, when I came home from Vietnam after a year of fighting for my country, that Captain Powell was able to become General Powell, the Chairman of the Joint Chiefs of Staff for the Armed Forces of United States.

But I didn't do it alone. I climbed on the backs of the those who came before me and those who broke the trail, the Buffalo soldiers and Tuskegee Airmen, and the other black military pioneers. I climbed on the backs of men and women who knew that they served a country that was not yet prepared to serve them. But they did it anyway because they had faith in what the future held for them and for their country.

I benefited from the sacrifices of Dr. Martin Luther King, Jr. and Jesse and Rosa and Andrew and so many, many others—black and white—who were determined to build an America that would be faithful to the dreams of its founding fathers. The men and women who are honored along with me today, your teachers and parents and family members who are present today, they struggled as well.

We succeeded because we worked hard, we believed in ourselves, and because we believed in the fundamental goodness of the American people and we believed in the redemptive potential of our society; and we did it all for you. We now expect you to do even more. We expect you to climb higher. We expect you to take advantage of the marvelous opportunities that are before you, opportunities that were not there for us. We expect you to let your shoulders be used by those who still search for success, who wonder if the dream is still there for them. Because you see, the struggle is not yet over. We're not where we have got to be. We're not where we want to be. We have a great America. We can make it a greater America.

There are those who say, "Well, you know, we can stop now. America is a color blind society." But it isn't yet. There are those who say, "We have a level playing field." But we don't yet. There are those who say that, "All you need is to climb up on your own boot straps." But there are too many Americans who don't have boots, much less boot straps.

A few—a few Horatio Alger stories, not enough to give hope to our fellow citizens who still live in the despair of racism, who are trapped in tightening circles of poverty

and poor education, who wonder if compassion and caring are still the pillars of the American dream. There are those who rail against Affirmative Action. They rail against Affirmative Action preferences, while they have lived an entire life of preference. There are those who do not understand that the progress we have achieved over the past generation must be continued if we wish to bless future generations.

And so, Colin Powell believes in Affirmative Action.

I believe it has been good for America, and I know that we can design Affirmative Action Programs that will satisfy the Constitutional requirements, because what we want is Affirmative Action that provides access for all Americans to the opportunities that rightfully belong to all Americans.

In my travels around the country since retirement, I have visited with many corporate leaders, and I have been pleased to see how committed American industry is to Affirmative Action. They understand that we cannot waste any human potential. They understand that in the future that is ahead they must have diverse work forces. They must be prepared to operate in a world trading environment that is increasingly minority, as we would call it, becoming a majority.

I'm very, very proud of what I've seen in American corporate life. In one case, one company leader said to me, "We don't care what the government does with respect to Affirmative Action. We believe in it. We believe it's the right thing to do. We are going to continue to move forward."

Affirmative Action finds and prepares qualified people for entry into the education system and into the work force. We must resist misguided government efforts that seek to shut it all down, efforts such as the California Civil Rights Initiative which poses as an Equal Opportunity Initiative, but which puts at risk every outreach program. It sets back the gains made by women, and puts the brakes on expanding opportunities for people who are in need.

I don't speak about Affirmative Action from an academic sense. I speak from experience. In the military, we worked hard to include all Americans. We used Affirmative Action to reach out to those who were qualified, but who were often overlooked or ignored as a result of indifference or inertia. We used Affirmative Action in the military to create the level playing field and to create the color blind environment that so many people speak of.

We didn't wait for it to happen. We made it happen in the military. We created an environment where advancement came from performance and a striving for excellence and not from color or gender. But first we had to open the gates to let people in. As a result, we produced an Armed Force rich in its diversity and the very, very best in the world, a reflection of what all of America should look like. So we have to keep it up. We have to commit ourselves. There is no alternative.

When one black man graduates, at the same time, 100 black men are going to jail. We still need Affirmative Action.

When half of all African American men between the ages of 24 and 35 years of age are without full-time employment, we still need Affirmative Action. When half of all black children live in poverty, we need Affirmative Action as well as quality education systems and a thriving economy to produce the good jobs, the good jobs that free enterprise and capitalism can produce, the jobs that at the end of day are the only solution to the problems we face.

Some people will say that Affirmative Action stigmatizes the recipients. Nonsense. Affirmative Action provides access for the qualified. And for anybody who feels stigmatized, go get A's instead of C's. Knock them dead. And then—I tell the story in my book about when I was a young Lieutenant and one of my commanding officers back then in the late '50s came up to me and said, "Powell, you're doing great. You're one of the best black Lieutenants I've ever known." And I just said, "Thank you, sir." And I said to myself silently, "That ain't going to be good enough. You may have a stereotype of me, but I intend to be the best Lieutenant you ever saw." And I will—for the way to handle stereotypes and stigmatism is to let it be somebody else's problem. You just perform and do your very, very best.

Because you see, the Army put me in an environment where I could be a winner, and I wanted to be a winner. Beautiful graduates before me this morning are all winners. You have benefited from the sacrifices of those who went before you. You have worked hard. And today, you receive your reward. You are filled by the love and by the dreams of your parents and families. You are nourished by the education you have received from the dedicated teachers here present who have given you the priceless gift of learning.

We expect you to go forth and prosper and contribute to the economic growth of this nation. We expect you to lead a life of service to your community and to serve those who have not had the advantages that you have. You are people of accomplishment. You are now role models. Each of you must find a way to reach down and back to help someone in need, someone in pain, someone who wonders if anybody cares, somebody who wonders if the American dream is still there for them.

In order to have a complete life, make sure you share your time, your talent, and your treasure with these who are less fortunate. We expect you to raise strong families. We expect you to raise children who are inspired to do even better than you are. Marry well, and marry for life. Be parents of value. Teach your children the difference between right and wrong. Teach your children the place of God in their lives.

Teach your children the value of hard work and education. Teach them to love. Teach them to be tolerant. Teach them to be proud of their heritage, their color. And teach them to respect their fellow citizens who may look different but who are not different.

Teach them to respect themselves, to believe in themselves. Teach them, above all, to believe in America as you must believe in America. America, a noisy, noisy country, the noise has a name. It's called "democracy." Democracy as we argue with each other to find the correct way forward. America, a wonderful place. A place with problems, problems that are now yours to solve and not just to curse, because we are a good people. We want to do the right thing. We must have faith in ourselves. We are, as Lincoln put it, "The last, best hope of earth."

I am so proud of you today, so very, very proud. Go forth now to make this a better land. Go forth to find your destiny. Go forth to find happiness. Go forth on your American journey. Go forth with my congratulations and with God's blessings. Have a great life. Thank you. •

#### NOMINATION OF NINA GERSHON

• Mr. MOYNIHAN. Mr. President, yesterday, by unanimous consent the Sen-

ate confirmed the nomination of Magistrate Judge Nina Gershon for the position of U.S. District Judge for the Eastern District of New York. I recommended Judge Gershon to President Clinton on July 11, 1995 and the President nominated her on October 18, 1995.

The Senate has confirmed a judge of impeccable credentials. She has been a magistrate court judge since 1976 and was chosen chief U.S. magistrate judge for the Southern District in January of 1992. Indeed, Judge Gershon has the distinction of being the first chief magistrate judge for the Southern District. Nina Gershon has shown herself to be an extremely able and well-respected magistrate. And I am confident that she will serve the Eastern District of New York with equal dedication.

Throughout the nomination process she has had bipartisan support and I thank the leaders for bringing her nomination forward. •

#### RENEWABLE TECHNOLOGIES RESEARCH AND DEVELOPMENT

• Mr. AKAKA. Mr. President, I want to express my support of Jeffords-Roth-Leahy renewable energy amendment. This amendment will restore funding for the Department of Energy solar and renewable energy research and development program to the amount appropriated in fiscal year 1996.

I want to thank Senator JEFFORDS for offering this amendment because I believe that our country's renewable energy program is at an important watershed. With support from Congress and the Federal Government, our Nation can forge ahead in developing reliable and cost-effective renewable technologies. We can also position our renewable energy industry to capture its share of the rapidly expanding market of solar and other renewable technologies. And, we can expand power generation capacity in an environmentally responsible manner.

In recent years, energy efficiency and renewable energy programs have been remarkably successful and have created a new industry capable of world leadership in a very important technology sector. Energy efficient technologies are generating billions of dollars of consumer energy savings and new business opportunities and play an important role in job creation, according to a study by energy expert Daniel Yergin. If we retreat from this promising growth industry, as we did throughout the decade of 1980s, our international competitors will quickly carve up a market that will exceed a billion dollars by the turn of the century.

We should not reduce funding for renewable R&D and allow this initiative to sputter and stall. We must move forward, as other countries are doing, and make essential investments in technologies that will create new jobs, open



export markets, and promote a healthy environment. This is the choice we have made in approving this amendment.

At stake is our ability to compete in an international energy market that will experience explosive growth in the decades ahead. Many countries cannot afford to meet the growing energy demand by building, operating, and maintaining centralized power plants and the costly infrastructure associated with them. The flexibility offered by renewable technologies is a natural fit for the developing world.

Countries around the world are also making conscious strategic decisions to endorse and adopt renewable energy as a mainstay of their energy policy. These policies may lead to the amelioration of problems associated with global climate change.

The past decade was a period of unparalleled success in the drive to reduce the cost of solar and renewable technologies. Some are at the verge of becoming cost competitive with conventional energy sources. This trend will continue to improve in the years ahead. As these technologies become more and more cost competitive, the rate at which these technologies are integrated into the energy grid will steadily increase.

What is at stake is the ability of a young, dynamic industry to capture the world markets for renewable technologies so that Americans can hold their share of rewarding, high paying jobs. That is what the Jeffords amendment is all about. If we are to move into the future with a strong economy and a healthy environment, renewable energy technologies must be a part of our investment strategy for the future.

Although the value of U.S. renewable energy exports exceeds a quarter of a billion dollars, the U.S. renewable energy industry is barely penetrating the expanding world market for renewable energy technologies. This is a result of a weak commitment to renewable energy research, development, and export promotion.

Compared with seven other leading trading nations, the United States ranks lowest in resources allocated to solar and renewable export promotion, according to a 1992 Department of Energy report.

National Science Foundation data confirms that the U.S. investment in R&D is in decline. Since 1987, Federal R&D investments have dropped steadily in real terms. Since 1992, industry R&D has stagnated. And today, less than one-third of private R&D is dedicated to research; the rest is being spent on product and process development.

I support the Jeffords amendment because I want to reverse this trend. Frankly, I would have preferred higher spending levels for solar and renewable programs, but this is not realistic

given the budget constraints we face. Unless we maintain a reasonable funding level for these programs, we will continue to lose ground and should not be surprised if other countries outcompete U.S. industry in this rapidly expanding market.

Finally, there are important energy security reasons for supporting this amendment. U.S. oil imports are at record levels, are continuing to grow, and could reach 60 percent of consumption by the year 2005. Oil imports that high would contribute nearly \$90 billion to the trade deficit. According to a recent Department of Commerce analysis, this level of oil imports constitutes a threat to U.S. economic security. Persian Gulf countries are projected to control 70 percent of the global market for oil by the year 2010, making world oil markets increasingly unstable.

Renewable energy technologies will lead to significant movement toward alleviating some of the potential negative consequences of our continuing and increasing reliance on imported oil.

#### TRIBUTE TO THE EXPERIMENTAL AIRCRAFT ASSOCIATION ON THE OCCASION OF THE 43D ANNUAL "FLY IN" IN OSHKOSH, WISCONSIN, AUGUST 1, 1996

• Mr. FEINGOLD. Mr. President, I rise today to salute the 160,000 international members of the Experimental Aircraft Association, based in Oshkosh, Wisconsin, on the opening day of their 43rd annual "Fly In" convention, the single largest aviation event of its kind in the world.

Mr. President, the Fly In, held at the Wittman Regional Airport in Oshkosh, is the stage for 12,000 experimental aircraft, vintage warplanes, showplanes, ultralights and rotorcraft. More than 700 exhibitors will present examples of cutting edge aviation technology, and more than 500 workshops, seminars and forums will feature many of the leading figures in aviation passing along their knowledge and experience on subjects covering the whole spectrum of flight.

More than 800,000 people from all over the world will attend the Fly In.

This year's program includes a salute to test pilots, the people who strap into the latest aviation designs and push them as far and as fast and as high as they can possibly go, pushing the performance envelope in the continuous quest for better aircraft. There will also be a salute to Korean War and Vietnam War veterans.

Mr. President, the Fly In is a terrific show, but it is only part of the ongoing work of the EAA.

The Experimental Aircraft Association works both to preserve aviation's heritage and promote its future. If you are interested in designing, building, restoring, maintaining or flying air-

planes, or if you simply take pleasure in watching aircraft perform, the EAA offers something for you through programs at the state, regional, national and international level, all aimed at making flying safer, more enjoyable and more accessible for anyone interested.

The EAA supports a foundation dedicated to the education, history and development of sport flying. It maintains a large collection of aircraft, a portion of which is on display at the EAA Air Adventure Museum in Oshkosh. EAA has created the Young Eagles program to give a free flight experience to young people, and there's a scholarship program for young people interested in aviation careers.

All this began, Mr. President, in January, 1953, a little less than 50 years after the Wright brothers flew at Kitty Hawk. Paul Poberezny and a group of flying enthusiasts met at Milwaukee's Curtiss Wright field, now known as Timmerman Field. The first Fly In was held nine months later at Curtiss Wright, drawing fewer than 40 people and a handful of aircraft.

Mr. Poberezny was elected the group's first president, and he held that post until 1989, when his son, Tom, took the reins. For the first 11 years of its existence, EAA was run out of the basement of Mr. Poberezny's home in Hales Corners, Wisconsin, near Milwaukee. Now it operates from its headquarters in Oshkosh.

Mr. President, flight has fascinated the human race for centuries. Less than a century ago, powered flight became a reality. Sixty-six years later, we landed on the moon. Still, the wonder of traveling among the clouds remains, and that spirit, along with the inventiveness and daring of pilots, designers and engineers, is nurtured by the Experimental Aircraft Association.

#### IT'S TIME TO END DEFERRAL

• Mr. DORGAN. Mr. President, it's time to end the perverse \$2.2 billion U.S. jobs export subsidy called deferral that our Tax Code provides to big U.S. companies that move their manufacturing plants and U.S. jobs to tax havens abroad, and then ship back their tax-haven products into the United States for sale. Since 1979, we have lost about 3 million good-paying manufacturing jobs in this country, in part, because of this ill-advised subsidy.

Presidents Kennedy, Nixon, and Carter all tried to curb this misguided tax subsidy. In 1975, the Senate voted to end it. In 1987, the House voted to stop it. But in each case, high-powered lobbyists for the big corporations were able to derail it before such action could be enacted and signed into law.

In July, Robert McIntyre, Director of the Citizens for Tax Justice, offered compelling testimony in support of the

effort to pull the plug on this misguided tax break at a recent Families First forum on paycheck security issues. He thoroughly debunks the lobbyist-driven myths that repealing this \$2.2 billion U.S. jobs export subsidy will somehow prevent large U.S. multinational firms from competing in the global economy. I think that you will find his testimony provides an excellent perspective on this subject, and I hope that you will read it.

I ask that the text of Mr. McIntyre's recent testimony be printed in the RECORD.

The material follows:

STATEMENT OF ROBERT S. MCINTYRE, DIRECTOR, CITIZENS FOR TAX JUSTICE, IN SUPPORT OF LEGISLATION TO CURB TAX SUBSIDIES FOR EXPORTING JOBS

Citizens for Tax Justice strongly supports legislation to limit current federal tax deferrals that subsidize the export of American jobs. Such reform legislation is embodied in S. 1355, Senator Byron Dorgan's "American Jobs and Manufacturing Preservation Act." Similar legislation has been approved by the House of Representatives in the past. We urge the full Congress to pass S. 1355 and send it to the President to sign.

TAX BREAKS FOR EXPORTING JOBS SHOULD BE ELIMINATED—WE SHOULDN'T PAY OUR COMPANIES TO MAKE GOODS FOR THE AMERICAN MARKET IN FOREIGN COUNTRIES

In its 1990 annual report, the Hewlett-Packard company noted: "As a result of certain employment and capital investment actions undertaken by the company, income from manufacturing activities in certain countries is subject to reduced tax rates, and in some cases is wholly exempt from taxes, for years through 2002." In fact, said Hewlett-Packard's report, "the income tax benefits attributable to the tax status of these subsidiaries are estimated to be \$116 million, \$88 million and \$57 million for 1990, 1989 and 1988, respectively."

This is not an isolated instance. An examination of 1990 corporate annual reports that we undertook a few years ago provided the following additional examples.<sup>1</sup>

Footnotes at end of article.

Baxter International noted that it has "manufacturing operations outside the U.S. which benefit from reductions in local tax rates under tax incentives that will continue at least through 1997." Baxter said that its tax savings from these (and its Puerto Rican) operations totaled \$200 million from 1988 to 1990.<sup>2</sup>

Pfizer reported that the "[e]ffects of partially tax-exempt operations in Puerto Rico and reduced rates in Ireland" amounted to \$125 million in tax savings in 1990, \$106 million in 1989 and \$95 million in 1988.

Schlering-Plough said that it "has subsidiaries in Puerto Rico and Ireland that manufacture products for distribution to both domestic and foreign markets. These subsidiaries operate under tax exemption grants and other incentives that expire at various dates through 2018."

Becton Dickinson reported \$43 million in "tax reductions related to tax holidays in various countries" from 1988 to 1990.

Beckman noted: "Certain income of subsidiaries operating in Puerto Rico and Ireland is taxed at substantially lower income tax rates," worth more than \$7 million a year to the company over the past two years.

Abbott Laboratories pegged the value of "tax incentive grants related to subsidiaries

in Puerto Rico and Ireland" at \$82 million in 1990, \$79 million in 1989 and \$76 million in 1988.

Merck & Co. noted that "earnings from manufacturing operations in Ireland [were] exempt from Irish taxes. The tax exemption expired in 1990; thereafter, Irish earnings will be taxed at an incentive rate of 10 percent."

In fact, under current law, American companies often are taxed considerably less if they move their manufacturing operations to an overseas "tax haven" such as Singapore, Ireland or Taiwan, and then import their products back into the United States for sale.

#### HOW WE SUBSIDIZE THE EXPORT OF AMERICAN JOBS

The tax incentive for exporting American jobs results from current tax rules that:

1. allow companies to "defer" indefinitely U.S. taxes on repatriated profits earned by their foreign subsidiaries; and
2. allow companies to use foreign tax credits generated by taxes paid to non-tax haven countries to offset the U.S. tax otherwise due on repatriated profits earned in low- or no-tax foreign tax havens.

#### S. 1355 WOULD END THIS WRONG-HEADED SUBSIDY

Why should the United States tax code give companies a tax incentive to establish jobs and plants in tax-haven countries, rather than keeping or expanding their plants and jobs in the United States? Why should our tax code make tax breaks a factor in decisions by American companies about where to make the products they sell in the United States?

Why indeed? We believe that this tax break for overseas plants should be ended. Profits earned by American-owned companies from sales in the United States should be taxed—whether the products are made in the USA or abroad.

S. 1355 would end the current tax break for exporting jobs—by taxing profits on goods that are manufactured by American companies in foreign tax havens and imported back into the United States. It would achieve this result by (1) imposing current tax on the "imported property income" of foreign subsidiaries of U.S. corporations; and (2) adding a new separate foreign tax credit limitation for imported property income earned by U.S. companies, either directly or through foreign subsidiaries.<sup>3</sup>

Legislation identical to S. 1355 was passed by the House in 1987. Unfortunately, at that time the reform provision was dropped in conference at the insistence of the Reagan administration.

#### SPURIOUS ARGUMENTS AGAINST CURBING SUBSIDIES FOR EXPORTING JOBS

Of course, Congress has heard loud complaints from lobbyists for companies that benefit from the current tax breaks for exporting jobs. Some have apparently argued that their companies will be at a competitive disadvantage in foreign markets if this legislation were approved. But since the bill applies only to sales in U.S. markets, that argument makes no sense.

Lobbyists also have asserted that if American multinationals have to pay U.S. taxes on their profits from U.S. sales for foreign-made goods, they might be disadvantaged compared to foreign-owned companies selling products in the United States. Perhaps. But as the House concluded in 1987, it would be far better "to place U.S.-owned foreign enterprises who produce for the U.S. market on a par with similar or competing U.S. enterprises" rather than worrying about "placing them on a par with purely foreign enterprises."<sup>4</sup>

Finally, lobbyists have made the spurious point that overall, foreign affiliates of U.S. companies have a negative trade balance with the United States, that is, they move more goods and services out of the United States than they export back in. To which, one might answer, so what?

After all, S. 1355 does not deal with all foreign affiliates of U.S. companies. Rather, it deals only with U.S.-controlled foreign subsidiaries that produce goods for the American market in tax-haven countries.<sup>5</sup> When U.S. companies shift what would otherwise be domestic production to these foreign subsidiaries it most certainly does not improve the U.S. trade balance; it hurts it.<sup>6</sup>

#### CONCLUSION

American companies may move jobs and plants to foreign locations in order to make goods for the U.S. market for many reasons—such as low wages or lack of regulation—that the tax code can do little about. But we should not provide an additional inducement for such American-job-losing moves through our income tax policy.

American multinationals should pay income taxes on their U.S.-related profits from foreign production. Such income should not be more favorably treated by our tax code than profits from producing goods here in the United States. We urge Congress to approve the provisions of S. 1355.

<sup>1</sup>Several of the companies mentioned here apparently have been lobbying hard against S. 1355.

<sup>2</sup>Many companies do not separate the tax savings from their Puerto Rican and foreign tax-haven activities in their annual reports.

<sup>3</sup>"Imported property income means income . . . derived in connection with manufacturing, producing, growing, or extracting imported property; the sale, exchange, or other disposition of imported property; or the lease, rental, or licensing of imported property. For the purpose of the foreign tax credit limitation, income that is both imported property income and U.S. source income is treated as U.S. source income. Foreign taxes on that U.S. source imported property income are eligible for crediting against the U.S. tax on foreign source income." "The bill defines 'imported property' as property which is imported into the United States by the controlled foreign corporation or a related person." House Committee on Ways and Means, "Report on Title X of the Omnibus Budget Reconciliation Act of 1987," in House Committee on the Budget, Omnibus Budget Reconciliation Act of 1987, House Rpt. 100-391, 100th Cong., 1st Sess., Oct. 26, 1987, pp. 1103-04.

<sup>4</sup>Id.

<sup>5</sup>Companies that manufacture abroad in non-tax-haven countries generally would not be affected by the bill, since they still will get foreign tax credits for the foreign taxes they pay.

<sup>6</sup>Foreign affiliates of U.S. companies that produce goods for foreign markets—not addressed by Senator Dorgan's bill—may well have a negative trade balance with the United States, insofar as they transfer property from their domestic parent to be used in overseas manufacturing. But it would obviously be far better for the U.S. trade balance—and for American jobs—if those final products were manufactured completely in the United States and exported abroad, rather than having much of the manufacturing process occur overseas. To assert that foreign manufacturing operations by American companies helps the U.S. trade balance is to play games with statistics.

For example, suppose an American company was making \$100 million in export goods in the U.S. for foreign markets. Now, suppose it moves the assembly portion of that manufacturing process overseas, where half the value of the final products is produced. At this point, instead of \$100 million in exports, there are only \$50 million. America has thus lost exports and jobs—even though the foreign affiliate itself has a negative trade balance with the United States. For better or worse, however, S. 1355 does not address this situation. •



## THE RUSSIAN ELECTIONS

• Mr. LEAHY. Mr. President, on June 16, something happened that has tremendous implications for the American people and for people everywhere. On that day, Russia, which just a few years ago was the greatest threat to democracy in the world, held a democratic election to select its President.

That alone, Mr. President, is reason to celebrate. Despite calls from people across the Russian political spectrum who still do not understand what democracy is about to cancel the election, the Russian government stuck by its commitment to democracy—

No decisions were taken by secretive Politburos.

Parties representing the full spectrum of political sentiment participated. Candidates crisscrossed that vast country making promises to win the votes of ordinary people.

And in the end, most stunning of all, there was a graceful concession speech by the losing candidate, the leader of the Communist party that only a little while ago we regarded as the personification of tyranny, committing the party to challenge irregularities in the election "in the courts, not in the streets."

Mr. President, this was not a perfect election. There were irregularities. There may well have been instances of ballot box stuffing. I was quite concerned about the extent to which media coverage of the election appeared to favor one candidate. But it also occurred to me that, if I were a newspaperman covering an election in which one major party had a record of advancing democracy and the freedoms associated with it and the other had a 70-year history of suppressing the freedom of newspapers like mine, I might have tended to advocacy rather than neutrality too. That is not an excuse, but despite the irregularities, there is general agreement that the will of the Russian people was heard in this election.

The Russian people voted for democracy, and the tremendous significance of that should not be lost on anyone. Despite all of the hardship they are experiencing. Despite the crime and corruption. Despite their loss of empire. Despite the fact that the standard-bearer of the forces of democracy has made many mistakes, the brutal war in Chechnya being the most egregious, and is in poor health.

The Russian people voted for freedom. Freedom to speak their minds. Freedom to associate. As ultra-nationalist Vladimir Zhirinovskiy, who is not someone I admire, put it in explaining why he would not support the communists: freedom to decide where to spend his vacation. For some, it came down to things as simple as that, things which we take for granted.

Mr. President, the world has changed profoundly in the last decade. Com-

munist as a world force is gone. Whatever the future may bring in terms of the distribution of power in the world, the age of ideological confrontation between communism and democracy is over. While there remain many aggressive forces in the world, I cannot help but feel that the world will be a safer place when its two greatest powers are both committed to democracy and the protection of individual rights.

And I think we owe credit to President Clinton, Secretary of State Christopher, and Deputy Secretary Talbott. Over the past 3 years, they have braved the attacks by those, including some in this chamber, who cannot bring themselves to give up their cold war notions about evil empires and would have us focus only on the vestiges of the old and ugly in Russia and ignore all that is new and promising.

Where do we go from here? As the ranking member of the Foreign Operations Subcommittee, I have watched as funding for foreign assistance has been slashed over the past 18 months, including assistance to Russia. Assistance to Russia is being phased out over the next 2 years, even though it is obvious that it is going to take the Russian people at least another decade to be able to take control of their own lives instead of expecting the government to do it for them, and that our assistance would be valuable to them.

President Yeltsin has won the support of his people to continue reform. But the Russian economy remains a shambles. The Russian Government has no money to finance its reforms. Crime is rampant. There are still pensioners on the streets of Moscow hawking pairs of children's rubber boots in order to survive.

Aid from the United States cannot possibly solve these problems directly. The problems are so immense that only the Russian people working together will be able to.

But what our aid can do is show them the way. Most Russians still have only a faint notion of what a market economy offers. Most also still carry the perceptions drilled into them by their Soviet masters that Americans are their enemies.

I have not been fully satisfied with the results of our aid program in Russia. There has been confusion, a lack of strategic thinking, and boilerplate approaches that did not fit the unique conditions there. Too much of the money has ended up in the pockets of American contractors, without enough to show for it.

But some programs have given the Russian people hope for a better future. People-to-people exchanges are an example of how we can help change old ways of thinking. I believe the thousands of exchanges of ordinary citizens that we have sponsored over the last 4 years played a role in President Yeltsin's victory. Farmer-to-farmer

programs. Business exchange programs. Academic exchange programs. Civic organization development projects. They have shown the Russian people what is possible.

Americans have learned from these exchanges too. We have learned that the Russian people are not ogres. Like us, they are mostly worried about the welfare of their families. But they are learning for the first time that it is possible to have a system of government whose primary aim is the defense of individual rights, and which actually serves them.

Mr. President, there remains much to criticize in Russia. The democracy that exists there is fragile, and the future unpredictable. The future is far from predictable. There will continue to be setbacks, and instances when Russia behaves in ways that are inconsistent with international norms. I have been horrified by the brutality of the Russian military in Chechnya. While it has been reassuring to see the outpouring of protest against this barbarity by the Russian people themselves, President Yeltsin and his security advisors need to recognize that Chechnya's future is not going to be decided by bombing its people into submission.

Having said that, let us today recognize how much has changed for the better in Russia compared to just a few years ago. And I hope we will also reaffirm our commitment to support reform in Russia. We know how to put our aid dollars to good use there, and there is much good yet to be done. •

## YEAR-ROUND SCHOOLS

• Mr. SIMON. Mr. President, recently a friend of mine, Gene Callahan, sent me an editorial from the Evansville Courier suggesting that Evansville look at year-round schools.

The reality is the whole Nation should do that.

We take the summer months off, in theory, so that our children can go out and harvest the crops. That made sense a century ago and maybe even 60 years ago, but it does not make sense today.

If we increased the school year from 180 days to 210, we would still be far behind Japan's 243 days and Germany's 240 days. And simply adding that 30 days would mean the equivalent of 2 additional years of school by the time the 12th grade is finished. But in reality it would be more than that. Any fourth grade teacher will tell you that part of the first weeks of teaching in the fourth grade is revisiting what students learn in the third grade. The three month lapse makes it more difficult for students starting in the fourth grade.

But suggesting year-round schools is not going to be simple. We will have to pay teachers more. We will have to air condition school rooms. In essence, what we will have to do is to make the

priority out of education that we must, if we are to be a competitive Nation with the rest of the world.

One not so incidental result of that would be that our students would be better prepared, we would gradually reduce our illiteracy rate, and because students will have more opportunity upon graduation and would not be in the streets in the summer months, the crime rate is likely to drop some. The drop is not likely to be dramatic, but it would help.

I commend the editors of the Evansville Courier.

Mr. President, I ask that the editorial from the Courier be printed in the RECORD.

The editorial follows:

[From the Evansville Courier, June 17, 1996]

TAKE ANOTHER LOOK AT YEAR-ROUND SCHOOL

The Evansville-Vanderburgh School Corp. has good cause to consider starting the school year in mid-August—test-readiness of children is a valid concern in both home and classroom. And in our view, the same argument weighs for future consideration of a year-round school calendar.

The school administration has recommended that the School Board approve a calendar that moves up the beginning of school by eight school days, in great part to allow students more time to prepare for state performance testing.

The ISTEP tests have been given in the spring, but beginning in the fall, they will be administered the last week in September and first week of October. With students returning from a three-month vacation, it will be a challenge for teachers to get them up to school speed in time for the tests. The earlier start would buy time for students and teachers.

The premise here—that students returning from a long summer vacation are not prepared to take a test—seems just cause for consideration of year-round school, such as the plan that will be tried at Lincoln Elementary School on an experimental basis.

In fact, children no longer need a three-month vacation; they no longer need to be off that long to work in the fields.

Three months away from school is counterproductive to learning. As a result, valuable learning time is needed each fall to reacquaint children with learning and to refresh what they learned the previous year.

The School Board should approve the administration's recommendation for the earlier school start, and then ask itself if the same rationale doesn't justify a serious look at year-round school.♦

#### EXECUTIVE SESSION

#### NOMINATION OF FRANK R. ZAPATA, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on the Executive Calendar: Calendar No. 677, the nomination of Frank Zapata, to be U.S. District Judge for the District of Arizona.

I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination was considered and confirmed, as follows:

Frank R. Zapata, of Arizona, to be United States District Judge for the District of Arizona.

#### NOMINATION OF ANN D. MONTGOMERY, OF MINNESOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to consider the following nomination on the Executive Calendar: Calendar No. 512, the nomination of Ann Montgomery to be U.S. District Judge for the District of Minnesota.

I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mrs. HUTCHISON. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Would the Senator from Texas wish to state her reason for the objection? Mr. President, could we get the attention of the Senator from Texas?

Mr. President, I have to say, if we are going to start playing this game—I have been urging my colleagues to cooperate not 1 day, not 2 days, not a week, not 2 weeks, but ever since the majority leader got elected to that position, every day. The majority leader has done an extraordinary job of working with me.

But I must tell you, that kind of act is going to end our cooperation pretty fast. That is unreasonable, not acceptable. And to not even respond. I have helped the Senator from Texas as late as last week. I worked very hard to get her legislation passed and sent over to the House. We got it done. We got it done. We would not have gotten it done. And this is the thanks we get, and this is the kind of cooperation we get in return.

Mr. President, it is going to be a long 2 days here and, I must say, an even longer month in September if all the cooperation is expected to come from this side. So we are going to have a lot more to say about this. And before we go into any other unanimous-consent agreements we are going to have a good discussion about what kind of reciprocity there is in this institution.

But that is very disappointing and very unacceptable. I yield the floor.

#### LEGISLATIVE SESSION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### REPEAL OF TRADING WITH INDIANS ACT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3215 which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3215) to amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

#### TRADING WITH INDIANS ACT REPEAL

Mr. KYL. Mr. President, I rise in very strong support of this legislation, H.R. 3215, to repeal the Trading with Indians Act. I would note that the Senate has twice approved measures to repeal this 19th century law—in November 1993, and again last October as part of a bill making technical corrections in Indian laws.

Mr. President, I want to begin by thanking the chairman of the Indian Affairs Committee, JOHN MCCAIN, who joined me in sponsoring the Senate companion bill, S. 199, and who encouraged his committee to incorporate it into last year's technical corrections measure. I also want to commend Congressman J.D. HAYWORTH for championing the legislation in the House on behalf of his native American constituents. Without his active support, it is safe to say that the House would not have acted on the measure this year.

When the Trading with Indians Act was enacted in 1834, it had a very legitimate purpose: to protect native Americans from being unduly influenced by Federal employees.

But, a law that started out with good intentions more than a century ago has become unnecessary, and even counterproductive, today. It established an absolute prohibition against commercial trading with Indians by employees of the Indian Health Service and Bureau of Indian Affairs. The problem is that the prohibition does not merely apply to employees, but to family members as well. It extends to transactions in which a Federal employee has an interest, either in his or her own name, or



in the name of another person, including a spouse, where the employee benefits or appears to benefit from such interest.

The penalties for violations can be severe: a fine of not more than \$5,000, or imprisonment of not more than 6 months, or both. The act further provides that any employee who is found to be in violation should be terminated from Federal employment.

This all means that employees could be subject to criminal penalties or fired from their jobs, not for any real or perceived wrongdoing on their part, but merely because they are married to individuals who do business on an Indian reservation. The nexus of marriage is enough to invoke penalties. It means, for example, that an Indian Health Service employee whose spouse operates a small business on a reservation could be fined, imprisoned, or fired. It means that a family member could not apply for a small business loan without jeopardizing the employee's job.

The legislation before us today will correct that injustice without subjecting native Americans to the kind of abuse that prompted enactment of the law 160 years ago. The protection that the Trading with Indians Act originally offered can now be provided under the Standards of Ethical Conduct for Government Employees. The intent here is to provide adequate safeguards against conflicts of interest, while not unreasonably denying individuals and their families the ability to live and work—and create jobs—in their communities.

Both Health and Human Services Secretary Donna Shalala and Interior Department Assistant Secretary Ada Deer have expressed support for the legislation to repeal the 1834 act. Secretary Shalala, in a letter dated November 17, 1993, noted that repeal could improve the ability of IHS to recruit and retain medical professional employees in remote locations. It is more difficult for IHS to recruit and retain medical professionals to work in remote reservation facilities if their spouses are prohibited from engaging in business activities with the local Indian residents, particularly since employment opportunities for spouses are often very limited in these locations.

Let me cite one very specific case in which the law has come into play. The case, which surfaced a couple of years ago, involved Ms. Karen Arviso, who served as the Navajo area IHS health promotion and disease prevention coordinator. Ms. Arviso was one of those people who played a particularly critical role during the outbreak of the hantavirus in the Navajo area at the time. She put in long hours traveling to communities across the reservation in an effort to educate people about this mysterious disease.

Instead of thanks for her dedication and hard work, Ms. Arviso received a

notice that she was to be fired because her husband applied for a small business loan from the Bureau of Indian Affairs. The Trading with Indians Act would require it. What sense does that make?

Mr. President, repeal of the Trading with Indians Act is long overdue. I urge the Senate to pass this legislation again today, and finally send it on to the President for his signature.

Mr. McCAIN. Mr. President, I rise today to express my support for H.R. 3215 a bill to repeal certain provisions of laws relating to trading with Indians and to urge its immediate adoption. I am pleased to be joined by Senator JOHN KYL in sponsoring S. 199, the Senate companion to H.R. 3215 to repeal the Trading with Indians Act.

H.R. 3215 would address a longstanding problem in Indian policy. I have worked extensively with my colleagues from Arizona, Senator KYL and Congressman HAYWORTH, to repeal the Trading with Indians Act. The Trading with Indians Act was originally enacted in the 1800's to protect Indians from unscrupulous Indian agents and other Federal employees. The prohibitions in the Trading with Indians Act were designed to prevent Federal employees from using their positions of trust to engage in private business deals that exploited Indians. These prohibitions carried criminal penalties including a fine of up to \$5,000 and removal from Federal employment. As time has passed, it has become apparent that the law is doing more harm than good.

The Trading With Indians Act has had significant adverse impacts on employee retention in the Indian Health Service [IHS] and the Bureau of Indian Affairs [BIA]. The problems stemming from the Trading with Indians Act are well-documented. The way that the law is written allows for the conviction of a Federal employee even when the employee is not directly involved in a business deal with an Indian or an Indian tribe. Because the prohibitions in the Trading with Indians Act apply to the spouses of IHS and BIA employees, the adverse impacts are far-reaching. For example, if a spouse of an IHS employee is engaged in a business that is wholly unrelated to the BIA or the IHS and does not transact business with the BIA or the IHS, the spouse is still in violation of the Trading with Indians Act. Employee retention in often rural and economically depressed Indian communities is difficult enough without the additional deterrent of an outdated prohibition to force out productive and experienced employees who might otherwise stay. The act even prohibits Indians from the same tribe from engaging in business agreements or contracts entirely unrelated to the scope of the Federal employee's employment. Because the act applies to agreements between all BIA and IHS

employees and all Indians regardless of their proximity or range of influence, it would prohibit a BIA or IHS employee on the Navajo reservation in Arizona from selling his car to a Penobscot Indian from Maine.

As tribal governments become more sophisticated and more Indian people become better educated and able to adequately protect themselves against unscrupulous adversaries, the Federal Government must respect these changes by repealing outdated and paternalistic laws which are still on the books. Respect for Indian sovereignty demands that the relics of paternalism fall away as tribal governments expand and grow toward self-reliance and independence. It is clear that although this statute served an admirable purpose in the 1800's, it has become anachronistic and should be repealed. The important policies reflected in the Trading with Indians Act are now covered by the Standards of Ethical Conduct for Employees of the Executive Branch. The Standards of Ethical Conduct for Employees of the Executive Branch adequately protects the Indian people and tribes served and provides simple guidelines to follow for all Federal employees when it comes to contracts with Indian people and Indian tribes.

I would like to express my appreciation for the work of Senator KYL and Congressman HAYWORTH in the development of this bill and I urge my colleagues to support passage of H.R. 3215. I ask unanimous consent that the statement of Senator KYL be included in the RECORD immediately following my remarks.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3215) was deemed read the third time and passed.

#### MEASURE READ THE FIRST TIME—H.R. 2391

Mr. GRASSLEY. Mr. President, I understand that H.R. 2391 has arrived from the House. I now ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2391) to amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees.

Mr. GRASSLEY. Mr. President, I now ask for its second reading.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Mr. President, I object on behalf of the Democrat party.

The PRESIDING OFFICER. Objection is heard.

# AUTHORIZING CONSTRUCTION OF SMITHSONIAN INSTITUTION NATIONAL AIR AND SPACE MUSEUM DULLES CENTER

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of S. 1995, and, further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1995) to authorize construction of the Smithsonian Institution National Air and Space Museum Dulles Center at Washington Dulles International Airport, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (S. 1995) was deemed read the third time and passed, as follows:

S. 1995

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. CONSTRUCTION OF MUSEUM CENTER.

The Board of Regents of the Smithsonian Institution is authorized to construct the Smithsonian Institution National Air and Space Museum Dulles Center at Washington Dulles International Airport.

## SEC. 2. LIMITATION ON USE OF FUNDS.

No appropriated funds may be used to pay any expense of the construction authorized by section 1.

## MUTUAL AID AGREEMENT BETWEEN BRISTOL, VA, AND BRISTOL, TN

Mr. GRASSLEY. I ask unanimous consent that the Senate now proceed to the consideration of House Joint Resolution 166 which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 166) granting consent of Congress to the mutual aid agreement between the city of Bristol, Virginia, and the city of Bristol, Tennessee.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. GRASSLEY. I ask unanimous consent that the resolution be deemed read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at their appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 166) was deemed read the third time, and passed.

## MEASURE READ THE FIRST TIME—S. 2006

Mr. GRASSLEY. Mr. President, it is my understanding S. 2006, introduced today by Senator HATCH, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2006), to clarify the intent of Congress with respect to the Federal carjacking prohibition.

Mr. GRASSLEY. I now ask for its second reading, and I object to my own request on behalf of the Senators on the Democratic side of the aisle.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

## MEASURE READ FOR THE FIRST TIME—S. 2007

Mr. FORD. Mr. President, I understand that S. 2007, introduced today by Senator BIDEN, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2007) to clarify the intent of Congress with respect to the Federal carjacking prohibition.

Mr. FORD. Now, Mr. President, I ask for its second reading, and I will object to my own request on behalf of Senators on the Republican side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be read for the second time on the next legislative day.

## ORDERS FOR THURSDAY, AUGUST 1, 1996

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m. on Thursday, August 1; that immediately following the prayer, the Journal of proceedings be deemed approved to date; the morning hour be deemed to have expired; the time for the two leaders be reserved for their use later in the day, and the Senate

immediately proceed to the consideration of the conference report to accompany H.R. 3734, the reconciliation bill, with the reading of the report having been waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. GRASSLEY. Tomorrow morning the Senate will begin consideration of the reconciliation bill under a statutory 10-hour time limitation. It is hoped the Senate will be able to yield back some of that time to allow us to complete action on that important conference report in a reasonable amount of time.

Senators can expect votes throughout the day and into the evening, and the Senate may also be asked to consider any other appropriation matters or conference reports that become available.

## ORDER FOR ADJOURNMENT

Mr. GRASSLEY. As long as there is no further business to come before the Senate tonight, I ask the Senate stand in adjournment under the previous order following my own remarks and the remarks of Senator WELLSTONE.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ELECTRONIC FUNDS TRANSFER PAYMENTS

Mr. GRASSLEY. Mr. President, I want to take a few minutes to announce a temporary tax victory for small business taxpayers. The IRS has made a failed attempt to implement new rules for payroll tax deposits. These rules would require many employers to make their biweekly payroll tax deposits electronically.

On July 12, I authored a letter to Treasury Secretary Rubin and IRS Commissioner Margaret Milner Richardson. This letter discussed problems that employers and banks are having in understanding new payroll tax deposit rules and methods.

First, my letter asks Secretary Rubin to address specific questions posed by employers and their banks. Employers and their banks have a growing series of questions about the new procedures. Many of these center around the degree of access that IRS has to bank customers' accounts. Second, the letter reminds the Secretary that he has authority under the law to provide some regulatory relief for small businesses.

Mr. President, I ask unanimous consent that the text of my letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:



U.S. SENATE,

Washington, DC, July 12, 1996.

Secretary ROBERT E. RUBIN,  
Department of the Treasury,  
Washington, DC.

DEAR SECRETARY RUBIN: This letter is to express our great concern of the impact upon small businesses and their banks of new Electronic Fund Transfer (EFT) rules. We hope that you will act in accordance with Congressional intent to ensure that the regulations do not create hardships for small businesses. We also wish that you will answer specific questions posed by our constituents working in the banking industry.

## SMALL BUSINESS CONCERNS

Because the current EFT rules create new and significant burdens for small businesses, and because the tax code specifically allows for exceptions from the EFT rules for small businesses, we request that you take immediate action to clarify the necessary exceptions well in advance of the January 1, 1997 effective date.

Small employers presently utilize the Federal tax deposit (FTD) coupon system and their local bank to make periodic payroll tax deposits with the Federal government. Internal Revenue Code Section 6302(h) seeks to reduce paperwork by replacing the FTD coupon system with an electronic fund transfer system. However, Congress intended, as set out in section 6302(h) and its legislative history, that the regulations prescribe exemptions and alternatives to the EFT rules for small businesses. To date, these exemptions and alternatives have not been promulgated.

As a result, employers and their banks are confused. The current regulations seem to require EFT compliance by all employers that had made employment tax deposits exceeding \$50,000 in 1995. In anticipation of the approaching effective date, the Internal Revenue Service has begun the process of educating employers of their new EFT compliance requirements. Nonetheless, small and rural employers know that the Congress intended that they be exempt, and they are eager to see the intended exemptions.

In part, the legislative history of the new law prescribes the following.

"The Committee [on Finance] intends that the regulations do not create hardships for small businesses."

"The provision grants the Secretary considerable flexibility in drafting the regulations and, the Committee [on Finance] urges the Secretary to take into account the needs of small employers, including possible exemptions for the very smallest of businesses from the new electronic transfer system."

Small businesses will suffer unintended hardships if your agency is unable to clarify the exemptions in advance of the effective date. It seems that many small businesses will need their banks to affect these new EFT transactions. Because their banks may view this as a new and different service, those banks may find it necessary to require small businesses to pay added fees. Also, because EFT transactions can involve a new variety of either debit or credit transactions, some small business persons are adverse to allowing the IRS the ability to deduct funds from their business accounts without what some may deem as an adequate "paper trail". Employers that do not need to comply should be spared the anxiety of the rule change.

Again, since the tax code anticipates exemptions for small and rural businesses, we request that you act promptly to define those exemptions in order to spare these employers the expense and anxiety of attempt-

ing to comply. Because employer penalties are involved, and the compliance date is approaching, we think that this requires your immediate attention.

## BANK CONCERNS

Small businesses are not the only ones concerned about the pending EFT rules. Although Iowa banks support efforts to modernize our banking system and increase the use of EFT, they have commented on potential problems arising from implementation of these regulations. Since small businesses are not governed by Internal Revenue Service Regulation E (except sole proprietorships), banks question whether proper notice and disclosure requirements will be in place. The following are a list of unanswered questions raised by banks.

(1) What degree of access to bank customers' accounts is provided to the Internal Revenue Service? Do the regulations give the Internal Revenue Service open access to a bank customer's account? What protections are in place to guard against unfettered access and use of information in the customer's account?

(2) A business may authorize a specific transfer to be made for the purpose of paying depository taxes. However, if penalties are assessed by the Internal Revenue Service, would the bank then have the authority or requirement to withdraw additional monies without the customer's approval from the customer's bank account to pay these penalties?

(3) Who is responsible for notifying businesses of transactions involving the bank account?

Iowa banks maintain that these are only several of many unanswered questions about the practical applications of the new regulations. Small businesses, banks, and the Internal Revenue Service all have an interest in assuring the proper and appropriate implementation of the regulations. Properly promulgating efficient and effective regulations that do not devastate either small businesses or banks requires cooperation amongst all of the parties concerned. Two of the three interested parties, small businesses and banks, have expressed important and pressing concerns. We believe that these questions and concerns should be addressed before implementing regulations that pose unnecessary or burdensome requirements on small business taxpayers or their banks.

Thank you in advance for your prompt and considerate attention to these matters. Because taxpayers in our state are eager to clarify these new rules, and because of the coming effective date of January 1, 1997, we would appreciate your efforts to make your response to us before August 23, 1996.

Sincerely,

CHARLES E. GRASSLEY,  
United States Senator.  
GREG GANSKE,  
Member of Congress.

Mr. GRASSLEY. Mr. President, 2 weeks ago, Secretary Rubin responded by letter that he appreciated my efforts to inform him of the problems, and that he was reviewing the matter.

Today, IRS Commissioner Margaret Milner Richardson announced that the IRS was suspending the 10 percent penalty for 6 months. The IRS had originally intended employers who had deposited \$50,000 or more last year to begin to follow the new electronic funds rules by January 1, 1997. Now, though employers are still encouraged

to comply, no penalty will be imposed for failure to change deposit methods until after July 1, 1997.

Mr. President, though only a temporary reprieve, this is a victory for small business employers, and I am proud of my part.

I welcome the efforts of Treasury and IRS to make a better second try at educating taxpayers. In my view, taxpayers are the consumers of the services provided by Treasury and the IRS. I think that good customer service sometimes includes a good second try.

I am also enthusiastic about the potential for Electronic Funds Transfers or EFT. For large and medium sized employers, EFT could become more efficient and cost effective than the present coupon FTD system. Some small businesses may realize similar economies. Other small businesses should be allowed alternatives.

The Treasury Department has also said that it will soon be responding to the questions that were posed in my letter. The response will be in the form of answers to some of the most common questions.

Though that response is still forthcoming, I think that the will allay some of the fears that employers and banks have posed. In part, the IRS seems to have simply done a poor job in its initial effort at education. However, I am waiting for the official response before determining how completely or adequately it answers all of my concerns.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## A BROKEN AGREEMENT ON A JUDICIAL NOMINATION

Mr. WELLSTONE. Mr. President, earlier tonight, at the time of our last vote, I was notified that we had an agreement—and let us call it kind of a code of honor—that Ann Montgomery, a very fine judge, who will be a great judge on the Federal district court in Minnesota, would be confirmed here tonight in the Senate.

Mr. President, for really many, many months now, picking up with intensity in the last several months and the last several weeks, I have been in intensive discussions with the majority leader, whom I think has been operating in very good faith. I felt as if I had received a very firm commitment from him—I believe his word is his bond—that while there had been some "soft hold" put on Judge Montgomery, actually at the beginning of this week or by

the middle of this week—it was to be tonight—we would move her nomination forward.

Mr. President, much to my amazement, after we had an agreement with a clear understanding that this would happen, at the last second one of my colleagues, the Senator from Texas, Senator HUTCHISON, objects. And when the minority leader, Senator DASCHLE, asks her why, there is no response at all.

Mr. President, let me just say that it is my firm hope that tomorrow we will have this resolved, and if a Senator has a "soft hold" on Judge Montgomery, then we should—and I certainly hope the majority leader will do this. I feel as if he had made the commitment to move this nomination forward. Then let us move this forward for a vote.

I did not ask for unanimous consent. If we need to have a vote, I would be pleased to debate with any Senator the merits of this nomination. Judge Montgomery has received just outstanding support and unbelievable recommendations from across the broadest possible spectrum of the legal community; support from myself and support from my colleague, Senator GRAMS from Minnesota.

So, Mr. President, let me just be crystal clear about it. What is so unfortunate is that here you have a fine judge who has been waiting to be district judge, has been waiting and waiting and waiting and waiting. I was just, I say to my colleague from Iowa, picking up the phone to call her. I had just

dialled it to say, "I want you to know the long wait is over. Tonight will be the night. Tell your family. Tell your children."

This is outrageous. And I would appreciate it if my colleagues would have the courage to simply defend whatever positions they take, not just announce a hold at the last second and then have nothing to say.

Mr. President, I am confident that we will resolve this. I believe the majority leader has given me his word. I think his word is good. I know it is good. But I have to say to my colleagues, whenever they are—I know it is not the Senator from Iowa—if you have a soft hold and you want to keep it anonymous, that is one of the procedures that is so outrageous to people in the country. We will just move this forward, and we will have debate, and we will have a vote.

Mr. President, I am really disappointed for Judge Montgomery tonight. I am absolutely determined that this will be resolved by the end of this week. I will do everything I can as a Senator from Minnesota, will use every bit of knowledge that I know about this process and this Senate, and every bit of leverage I have to make sure that this eminently qualified woman becomes a U.S. district court judge.

I hope we can work in the spirit of collegiality. I certainly did not see that tonight.

Mr. President, I yield the floor.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m., Thursday, August 1, 1996.

Thereupon, the Senate, at 10:09 p.m., adjourned until Thursday, August 1, 1996, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate July 31, 1996:

### IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

#### To be lieutenant general

MAJ. GEN. DAVID J. MCCLOUD XXX-XX-X...

### IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

#### To be lieutenant general

MAJ. GEN. FREDERICK E. VOLLRATH XXX-XX-X...

## CONFIRMATION

Executive nomination confirmed by the Senate July 31, 1996:

### THE JUDICIARY

Frank R. Zapata, of Arizona, to be U.S. District Judge for the District of Arizona.